Public Utilities

FORTNIGHTLY

July 18, 1940

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

"I don't like that sign, Mr. Watts!"

"YOU mean that sign in the Main Street window? What about it?"

"It says 'Silex with Stove—$4.95'. Why, that stove alone is worth a window!"

"Wha-at? A stove's a stove, isn't it?"

"Not that stove. You see, it's SELF-TIMING!"

"What does that mean?"

"It means that the water and the coffee are kept together just the right number of seconds *to make perfect coffee every time.*"

"But doesn't any coffee maker do that?"

"That's what *you* think! No other coffee maker has a self-timing stove. It's a patented feature of Silex. So you can't guarantee perfect coffee every time with any other brand!"

"But you *can* guarantee it with Silex?"

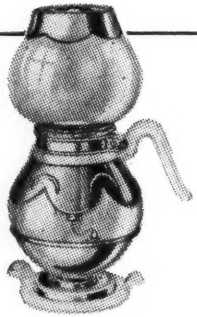
"I'll say you can, Mr. Watts—and you SHOULD!"

"Then I'll say we will! Get hold of that display man and the advertising manager. We're going to feature SELF-TIMING SILEX!"

"That's the stuff, Mr. Watts. And don't forget it's the self-timing stove that makes women use their Silex every day—that's an average of 87 KWH a year per meter!"

Perfect Coffee Every Time!

That's the tip-off. Your Silex representative would like to help you plan a promotion on this exclusive Silex feature that will put more KWH on your load.



Every Electric Silex has a Self-Timing Stove!

Just shut off the current when the water gets up and Silex brings it down . . . as perfect coffee! It's an exclusive Silex feature—patented so it can't be copied. Good reason why women want the stove when they buy Silex (and that boosts sales totals—electric models priced from $4.95 to $29.95). Good reason, too, why they *use* the stove when they take it home. (And that adds KWH to your load!) Illustrated—"Saratoga" Electric, $6.45 retail, 8-cup size, ivory trim.

PYREX BRAND GLASS USED EXCLUSIVELY

Genuine SILEX

GLASS COFFEE MAKER

TRADE MARK REGISTERED U.S. PAT. OFF.

THE SILEX COMPANY . . . HARTFORD, CONNECTIC

Creators of the Glass Coffee Maker Industry

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Public Utilities Fortnightly

VOLUME XXVI *July 18, 1940* NUMBER 2

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

WHEN Hitler started his big push to the sea last spring there was considerable speculation as to whether the horror of "total war" would push even such an important event as a presidential campaign right off the front pages of the American newspapers. Some observers were predicting (at a time when it looked as though the European war was going to last much longer than it does now) that the two national conventions would be definitely "inside page stuff," and that the whole presidential campaign might fizzle out as a sort of anticlimax to the end of a world organized predominantly along democratic lines.

BUT events at the Republican National Convention a fortnight ago and the build-up for the forthcoming Democratic convention, which is scheduled to be called to order about the time this issue of PUBLIC UTILITIES FORTNIGHTLY reaches the hands of the reader, prove that civilizations may rise and civilizations may fall, but the loyalty of our average citizen to the great American game of politics will never be extinguished.

As we go to press the Democratic bigwigs are still figuratively plucking the petals from third-term question daisies. Soon we shall know the complete line-up for one of the hottest presidential campaigns the country has faced since Billy Bryan ran away with the Democratic nomination back in '96. Even our neighbors south of the border put on an exciting show a few days ago in an effort to select a successor to President Cardenas of Mexico.

BUT notwithstanding our preoccupation with political affairs, which are both necessary and vital to the destiny of our country, the European arena continues to provide us with some very real July fireworks. And they are not celebrating any declaration of independence, either. This, in turn, means that our own national defense program must go on unimpeded no matter who wins or loses at the polls next November.

HAROLD D. KOONTZ

"It may even now be too late to save the railroads and some of the other agencies of transportation from government ownership."

(SEE PAGE 67)

FERGUS J. MCDIARMID

He sees no reason in American finance for throwing Canadian utilities overboard.

(SEE PAGE 87)

IN this issue we continue our series of articles dealing with the impact of the war situation on public utility industries. The leading article by PROFESSOR HAROLD D.

KOONTZ analyzes our transportation policy in the light of national defense requirements. We also present a discussion of the effect of the European war on the public utilities operating in Canada by FERGUS J. MCDIARMID.

PROFESSOR KOONTZ is a native of Findlay, Ohio, and was educated at Oberlin College (A. B., '30), Northwestern University (M. A., '31), and Yale University (Ph.D., '35). Before taking his present post as assistant professor of economics at Colgate University (teaching business regulation, utilities, and transportation) he taught various economic subjects at Duke and Toledo universities.

MR. MCDIARMID graduated from the University of Toronto in 1928 and has since been active in actuarial and life insurance investment fields in the United States through association with the Lincoln National Life Insurance Company of Fort Wayne, Ind. He is now the assistant manager of the investment research department of that organization. Thus by inheritance, as well as by experience, MR. MCDIARMID is well qualified to discuss the affairs of public utilities.

MILLARD MILBURN RICE

"There is only one end for any wholesale adventure into state socialism—the complete elimination of private enterprise."

(SEE PAGE 80)

SPEAKING of the effect of war on our transportation system, the problems of the American railroads under the stress of the rearmament program seem fairly simple, for the moment at least, compared with the difficulties faced by the out-going foreign mail department of our Post Office. It is reported that some European countries are now getting mail from the United States via the Pacific and trans-Siberian railroad. Ever since Italy declared war, most of the European countries bordering the Mediterranean have been cut off from direct mail service with America, except the expensive cargo carried by the clipper ships via Portugal.

THE only reason we mention this at this time is in case certain foreign subscribers to a certain well-known magazine are wondering why they have not received any issues since last March or thereabouts.

COMPARING notes with the editor of an esteemed contemporary, we found this foreign mail situation quite general. Our colleague said that a neat stack of recent issues of his publication had been accumulating—of all places—in General Franco's Spain. They were not intended for Spain but for certain places in what used to be Poland and the Balkan countries. The editor did not have the slightest idea what they were doing in Spain unless it was that the German postal authorities were trying to work out some general overland route through defeated France.

AND SO, for the sake of any readers in the old world, let it be here recorded that it is not the fault of the editors if the FORTNIGHTLY doesn't come in right on the dot. And don't blame the postal authorities either. It's a rough world we live in—subject to change without notice.

MILLARD MILBURN RICE, whose article on "The Creeping Paralysis of State Socialism" also appears in this issue (page 80), is a well-known contributor of articles (chiefly on business, economic, and political subjects) to numerous national magazines, including *The Saturday Evening Post, Collier's, Nation's Business,* and so forth. He was educated at Western Maryland College and was a professional accountant before taking up literary work. He is now engaged in free-lance writing at his home in Jefferson, Md.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Federal Power Commission determines whether or not it has jurisdiction over interstate wholesale rates charged to municipalities by public utilities otherwise subject to its jurisdiction. (See page 257.)

THE New York commission defined the duty of a water company to furnish service at a summer resort. (See page 313.)

THE next number of this magazine will be out August 1st.

The Editors

ES, JIM... no more × and ÷ by hand. **NOW** we do it tomatically, on the same machine that gives us our + and —.

...Throwing our money around, am I? Listen, Jim—you know better than that. I did some heavy thinking before I bought us s new Remington Rand Printing Calculator.

've got a good solid little business here—a nice money-maker both of us—but the figure-work here in the office has been on my nd for some time. You see, the easiest part of our office arithmetic he adding and subtracting—we do on an adding machine. The lly tough figure-work—extending and pricing orders, figuring ts and payrolls, computing taxes—we do with paper and pencil. hat logical?

..No, we don't have a lot of calculating work—certainly not ough to justify buying a separate calculating machine. But the ume is growing, and hand-figuring slows us down. It was all just eadache to me, until this Printing Calculator was invented a few nths ago. It does everything an adding machine will do. What's re, it multiplies electrically. It divides automatically. It prints ry factor of every problem. Best of all, it costs only a few dollars re than the most complete adding machine.

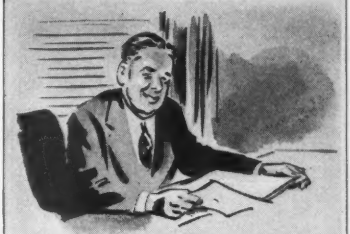
..So I did exactly what you'd have done—traded in our adding chine on a new Printing Calculator. Our money is invested in t one machine, but that *one* does the work of *two!"*

Thousands of businesses, like this one—small businesses, the backbone of American commerce—have enthusiastically bought the Printing Calculator. Do *you* still do the toughest part of your office figuring by hand? Then you owe it to yourself to get a full, free demonstration of the machine that cuts costs and protects profits. Phone your nearest Remington Rand office today—or write Remington Rand Inc., Buffalo, New York. In Canada, address Remington Rand Ltd., Toronto.

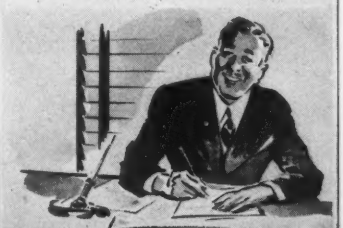
The Remington Rand

Printing Calculator

We use it mainly for calculating... but its listing-adding feature is a decided convenience.



We've put one in every branch, replacing two machines... freeing capital once "frozen".



We use it for all original work, eliminating the "re-run for proof" time previously needed.

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 33 PUR(NS)

★ ★

ACCEPTED- *Because VULCAN is DEPENDABLE!*

gineering executives purchase equipment on demonstrated performance. That's why en-neers in every conceivable industry purchase Vulcan and the reason why Vulcan was sold forty-three states, every Province of Canada, Porto Rico, Territory of Hawaii and eleven reign countries during the past year. The following partial list of representative contracts r 1939 demonstrate the popularity of Vulcan among engineers in every type of industry o have taken the time to investigate the reasons for Vulcans rugged dependability. any of these contracts are repeat orders, real evidence that Vulcan gives highest satis-ction.

Socony Vacuum Oil Co.....East St. Louis, Mo.
Town of Albion.....Albion, Indiana
Pairpoint Corporation.....New Bedford, Mass.
Charleston Navy Yard.....Charleston, S. C.
U. S. Naval Academy.....Annapolis, Md.
Metropolitan Life Insurance Co....New York City
Park Chester Housing Development
Griesdieck Western Brewery.....Belleville, Ill.
Minot Normal School.....Minot, N. D.
Southland Paper Mills.....Lufkin, Texas
Bethlehem Steel Company.....Lebanon, Penna.
Norfolk Navy Yard.....Norfolk, Va.
Fairmont City Light Co.....Fairmont, Minn.
Evenson and Levering Company....Camden, N. J.
Socony Vacuum Oil Company.....Brooklyn, N. Y.
City of Bellefontaine.....Bellefontaine, Ohio
Gallinger Hospital.....Washington, D. C.
Colorado State Agricultural College
Fort Collins, Colo.
Navajo Agency.....Ft. Defiance, Arizona
Victor Chemical Company....Mt. Pleasant, Tenn.
McChord Field, U. S. Army....Ft. Lewis, Wash.
B. F. Goodrich Company.....Clarksville, Tenn.
Canadian National Railways. Winnipeg, Man., Can.
Carnation Compny.....Sherbrooke, Quebec, Can.
Alexandria Steam Generating Co...Alexandria, Va.
South Porto Rico Sugar Company
Santa Domingo, Dom. Rep.
George Ziegler Company.....Milwaukee, Wis.
Atlas Powder Company.....Stamford, Conn.
Colorado State Capitol.....Denver, Colo.
Hercules Powder Company.....Hercules, Del.
U. S. Military Academy.....West Point, N. Y.
Container Corporation of America
Circlesville, Ohio
Commodore Perry Housing Project...Buffalo, N. Y.
DeKalb State Teachers College.....DeKalb, Ill.
United States Shoe Corp.....Norwood, Ohio
The May Company.....Cleveland, Ohio
United States Naval Hospital...San Diego, Calif.
Frankford Arsenal.....Philadelphia, Penna.
Central Park Pumping Station.....Chicago, Ill.
Virginia Public Service Co.....Hampton, Va.
Atlas Powder Company.....Atlas, Mo.
City of Fairmont.....Fairmont, Minn.
Froedtert Grain and Malting Co..Milwaukee, Wis.
Sonoco Products Company.....Garwood, N. J.
Sheridan Brewing Company....Sheridan, Wyoming
City of Fort Collins.....Fort Collins, Colo.
Ingenio Riogaila....Buenaventure, Columbia, S. A.
South Carolina Electric and Gas Co....Parr, S. C.
American Woolen Company.....Fulton, N. Y.
Keystone Public Service Company.Oil City, Penna.
Alabama Power Company.....Chickasaw, Ala.
Pennsylvania Power and Light Co.
Harrisburg, Pa.
Holyoke Gas and Electric Co.....Holyoke, Mass.
Durkee Famous Foods.....Chicago, Ill.
Blanton Company.....St. Louis, Mo.
Continental Diamond Fibre Co..Bridgeport, Penna.
Westinghouse Electric and Manufacturing
Company, Lima, Ohio
Libby, McNeill and Libby.....Chicago, Ill.
Vanadium Corporation.....Naturita, Colo.
Philadelphia Electric Company....Chester, Penna.

lcan Soot Blower Corporation does not ild down to a price. Vulcan builds into their quipment thirty-seven years of experience; ild by highly skilled engineering and plant ersonnel of long service, using the highest pe material that hard exacting service has emonstrated is the most practical for its rpose. The result is trouble free, long years of service, making unnecessary frequent servicing—and when service is required, skilled field engineers on their rounds, offer it gladly to maintain your Vulcan equipment in top condition. Ask the Vulcan Sales or Field Engineer WHY Vulcan MUST build into their equipment the most rugged, trouble free, lowest maintenance you can buy.

VULCAN SOOT BLOWER CORP., Du Bois, Penna.

★ ★

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

CARL E. BAILEY
Governor of Arkansas.

"It is psychologically bad to think or talk in terms of what the Federal government is doing for the people."

EDITORIAL STATEMENT
The United States News.

". . . sight-plus-sound broadcasting is having a harder time getting out of its swaddling clothes than did radio itself."

E. L. SHEA
President, The North American Company.

"Capital, it seems, is after all only a large amount of small money risked by hard-working people big enough to have confidence in the future of the country."

LEON PHILLIPS
Governor of Oklahoma.

"I believe in the Democratic form of government. I don't believe in a dictator—either the Secretary of Interior, Congress, the courts, or in the governor's office."

CARTER FIELD
Writing in Electrical World.

". . .—the public has been barraged much more intensively with the arguments against private ownership of the electrical industry than it has for private ownership."

W. W. ATTERBURY
Late president, Pennsylvania Railroad Company.

"There is no panacea for the resumption of prosperity except the slow, painful one of hitting the bottom and then building up with a sane economical foundation on which to build."

C. M. BAKER
President, International Typographical Union.

"Every sensible working man and woman desires to see the decent employer make money. For it is only when the employer makes a profit that the worker can have higher wages, shorter hours, and work."

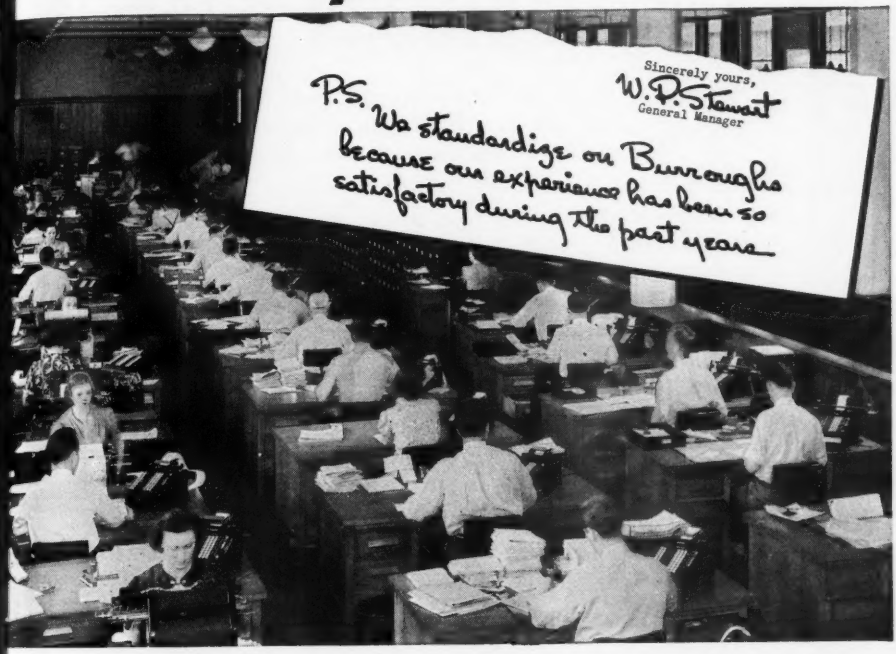
CHARLES W. KELLOGG
President, Edison Electric Institute.

"The great emphasis on the consumption of electricity in the home is largely politics, because the number of users in the home is about 24,450,000 and to the ordinary politician that sounds like 24,450,000 votes . . ."

PAUL J. RAVER
Bonneville Power Administrator.

"From the start of my administration I have attempted to work out coöperative arrangements with private companies to avoid uneconomic construction of transmission lines. I expect to continue that policy unless the private companies prevent it."

Only a P.S.



This postscript summarizes the thinking of thousands of Burroughs users.

Experience has taught users the certainty of satisfaction, long life and maximum return on their investment in Burroughs equipment.

Experience has proved the availability and competence of Burroughs factory-trained, factory-controlled service in safeguarding their equipment against costly interruption.

Experience also prompts users to depend upon Burroughs research engineers for a steady flow of new machines, new features and new developments for keeping pace with changing office requirements.

Your local Burroughs representative, backed by a full line of thoroughly modern Burroughs machines and features, is experienced in recommending exactly the right equipment for any figuring, accounting, cash handling or forms-writing job. Why not call him today?

BURROUGHS ADDING MACHINE COMPANY
6381 Second Ave., Detroit, Michigan

Today's Burroughs

DOES THE WORK IN LESS TIME—WITH LESS EFFORT—AT LESS COST

EDITORIAL STATEMENT
Broadcasting.

"Communications, broadcasting particularly, has lots of legal glamour, and unquestionably presents alluring possibilities for government lawyers."

DAVID LAWRENCE
Editor, The United States News.

"The present adventure in tinkering with a $12,000,000,000 industry means that for the next few years there is bound to be stagnation if not deflation while the whole power industry is plunged into chaos, thus interfering with expansion and reëmployment . . ."

EDITORIAL COMMENT
Phoenix (Ariz.) Gazette.

"The SEC has a gigantic task, made more difficult by the refusal of some public utility holding companies to coöperate. . . . The commission, in common with some other New Deal agencies, has never had a chance to show what it can do, because of the obstructionists fighting it at every step."

WALTER C. BECKJORD
President, American Gas Association.

"The gas industry has been constantly moving forward. It has survived many business vicissitudes which have completely submerged other industries. It has survived keen and intelligent competition of electricity, oil, and coal. It has built itself into a wider range of activity and it has constantly kept up to date in the great plan of giving a modern service to the public."

PAUL V. MCNUTT
Federal Security Administrator.

"It is not an indication of weakness to accomplish through government what individuals are incapable of accomplishing alone. It is not defeatism. It is evidence of strength and intelligence. And it is the kind of strength and intelligence that has made it possible to build a great nation out of a wilderness and to develop a national unity unequaled on the face of the earth."

WENDELL L. WILLKIE
Republican nominee for President.

"I say to you that in the next four years we must have not only a change in the technique of government but a change in its spirit. We must have a government which regards itself as the servant of the people, not its master; a government without prejudice; a government under which we can move forward again as a united nation—men of confidence, men of hope, men of good will."

JOHN E. ZIMMERMAN
President, United Gas Improvement Company.

"I . . . have serious doubts of the wisdom of fixing a rate of return which is the same for all companies regardless of the efficiency and progressive character of the management, because it eliminates the incentive to initiative and enterprise. I am quite certain that the best interests of the public would be served in the way of better service and lower rates if there were a reward for exceptional management."

See the New INTERNATIONAL DIESE TracTracTors

Here's the biggest crawler-power news of the year—International's FOUR NEW DIESEL TRACTRACTORS. We offer the big TD-18, the small TD-6, and the in-between sizes—TD-9 and TD-14 . . . *perfectly designed balanced power* to operate *balanced equipment* at a profit.

International Harvester has designed economy, performance, low upkeep, operator convenience, and long life into these powerful, versatile crawlers. Their handsome streamlined style shows what's on the surface. Under their hoods are International *full* Diesel engines, long famous for their quick, easy starting, outstanding economy, an lugging ability.

Every detail of TracTracTor desig is perfectly coordinated with the powe of the engine to turn out the most wor per day at the lowest cost.

These New DIESEL TracTracTo have what it takes. Ask the nearby I ternational industrial power dealer Company branch all about them.

INTERNATIONAL HARVESTER COMPANY
(Incorporated)
180 North Michigan Avenue Chicago, Illi

INTERNATIONAL HARVESTER

He Fingerprints Lightning

TATIONED high atop the University of Pittsburgh's skyscraper Cathedral of Learning, the Westinghouse ulchronograph uncovers previously known characteristics of lightning. any similar instruments have been inlled on power company lines throughout the country so as to secure data om different localities and aid in the velopment of protective devices for ansmission and distribution systems all types.

A recent Westinghouse development, the field of power system protection, the new porous block lightning arster for station and distribution es. The Fulchronograph records oved this arrester to be capable of sisting "hot" lightning — that is, lightning with a wave "tail" lasting several ousand microseconds. A much-needed increase in protection was thus brought to ral power lines.

Westinghouse activities in research, in the manufacture, distribution and application of apparatus, and in promoting the use of electricity, result in better service to you and a wider use of electricity by your customers. They have been made possible and are continually encouraged by your purchases of Westinghouse apparatus.

ESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, EAST PITTSBURGH, PA.

Tune in "Musical Americana," N. B. C. Network, Coast-to-Coast, every Tuesday evening.

Westinghouse

W WESTINGHOUSE ELECTRIC

Pin a Speed Medal on your report operations

WITH THE NEW

Ditto D-44

ome utility men take nearly as long to *produce copies* heir reports as it took to gather that data. Others have covered Ditto. When *you also* know the new Ditto D-44, 'll find that it is useful to everybody, every day, every r, on practically every routine operation.

Without type, stencil or ink it makes 300 and more ght copies of anything written, typed or drawn . . . schedules; operating and progress reports; specifica-s; engineering drawings; service, factory and work ers; forms, and the like . . . 70 copies a minute, in one our colors at once, 6c for the first 100, 3c thereafter. iginals can be used repetitively—excellent for cumu-e reports.

Make your department more effective—get the whole y of Ditto's public utility performance on gelatin or id duplicators. Use coupon for free idea-booklet, pies, Their Place in Business." No obligation!

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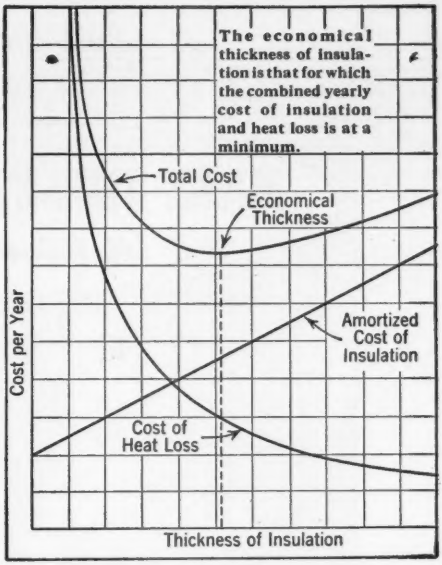
How to SAVE THE MOST MONEY with INSULATION



Make sure all your equipment is insulated with the *correct materials* in the *one correct thickness* that combines maximum operating efficiency with minimum heat waste

WHETHER OR NOT your insulation is a paying investment depends entirely on the materials used and the amount applied. *Too much* insulation will never pay an adequate return . . . *too little* results in heat losses that build up excessive fuel bills. Proper insulation, properly applied, will avoid both these costly mistakes. And that's where the J-M Insulation-Engineering Service can help you.

Let a J-M Engineer go through your plant and make a thorough study of your requirements. He'll give you the benefits of Johns-Manville's 81 years' research and practical experience with insulation problems. He can tell you exactly how much insulation you can profitably use . . . and his recommendations will point the way to worthwhile reductions in your fuel costs.

• • •

This helpful service has saved thousands of dollars for many individual steam plants. There's a good chance a J-M Engineer can do the same for you. For full details on the J-M Insulation-Engineering Service and information on the complete line of J-M Insulations, just write Johns-Manville, 22 East 40th Street, New York, N. Y.

Johns-Manville INDUSTRIAL INSULATIONS

FOR EVERY TEMPERATURE . . . FOR EVERY SERVICE CONDITION

Dictograph Intercommunicating Equipment being used by Customer Contact Clerk in securing credit verification from History records. Loud Speaking Equipment allows both hands of History Clerk free for handling necessary records while relaying information.

IMPROVE YOUR *CUSTOMER CONTACTS*

How *rapidly* can your Contact Clerks take care of service applications . . . bill questions . . . complaints?
How satisfactorily to your customer? . . . Do your transactions pass the "peak load test"?

Unless your Company has a perfect score on these questions you will want to know more about the Dictograph Customer Contact System.

Specially designed Dictograph Intercommunicating Equipment for Contact Clerks provides instant entree to Credit, Meter Records, Service and Unit book information. Green and red signals bring back Credit approval or rejection,—swiftly . . . silently! *Loud speaking* Dictographs for Credit and Service Clerks permit use of *both hands* for record references, enabling personnel to check records speedily and accurately during peak periods.

Existing record facilities can be linked up to centralized Customer Contact Clerks by means of Dictograph. Applications, Duplicate Bills, Comparative Readings, High Bill Complaints, Discounts, etc., can be efficiently and speedily handled.

May we have our Special Utility Representative call to discuss your problem with you . . . . no obligation.

DICTOGRAPH SALES CORPORATION
580 Fifth Avenue, New York

"Sorry, I'm not going – I'll be shopping instead!"

"HIS SPEECH at the club luncheon is going to be about advertising, and I know just what he's going to say. I've read his book.

"He's *against* advertising . . . says it adds to the cost of living . . . that it misleads and deceives the public.

"Tommyrot! Dad's first car cost more than two thousand dollars. Ours cost less than half that much and it's a better car.

"Our first package of corn flakes was fifteen cents. Now we get *two bigger* packages for fifteen cents and they reach us fresher and crisper.

"Mother wore silk stockings only on Sundays because they cost so much. I wear them every day!

"I think the lecturer is all wet. Tell him I wouldn't enjoy his speech. The only ad I ever read that sold me a poor bill of goods was the one about his book."

★ ★ ★ ★ ★

Venomous books and speeches, in which radical agitators attack advertisers, have been much in fashion these last few years. But the novelty is wearing off and interest wanes as one after another of the attackers figures prominently in the findings of the Dies Committee.

Advertising is not a sinister something to suspect. It is just a part of selling, a proved method of increasing business activity—a condition we've all been praying for since 1930.

It has introduced new luxuries and improved necessities in towns and villages at the same moment as in the great metropolitan centers.

It has played a leading part in lifting home drudgery from the backs of women, putting the nation on wheels, improving our diet, hygiene and appearance. By stimulating mass production it has brought down the cost of the things we buy. It has helped keep our factories busy, our people at work.

Let's cheer advertising on. Help it to give business a lift. *What helps advertising helps you.*

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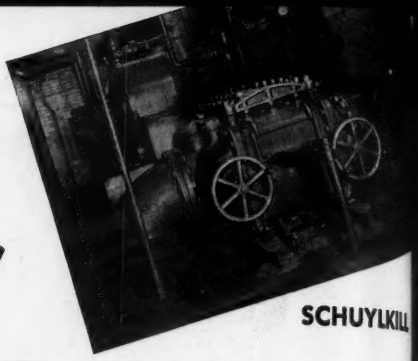

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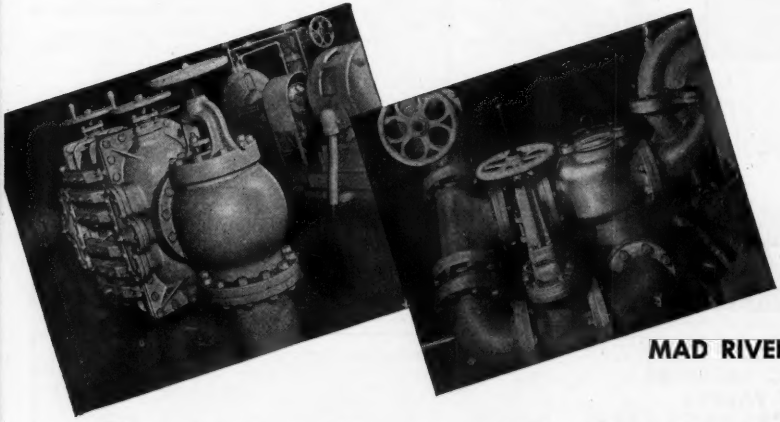

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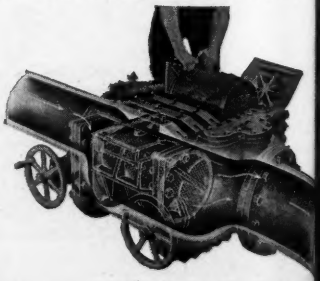

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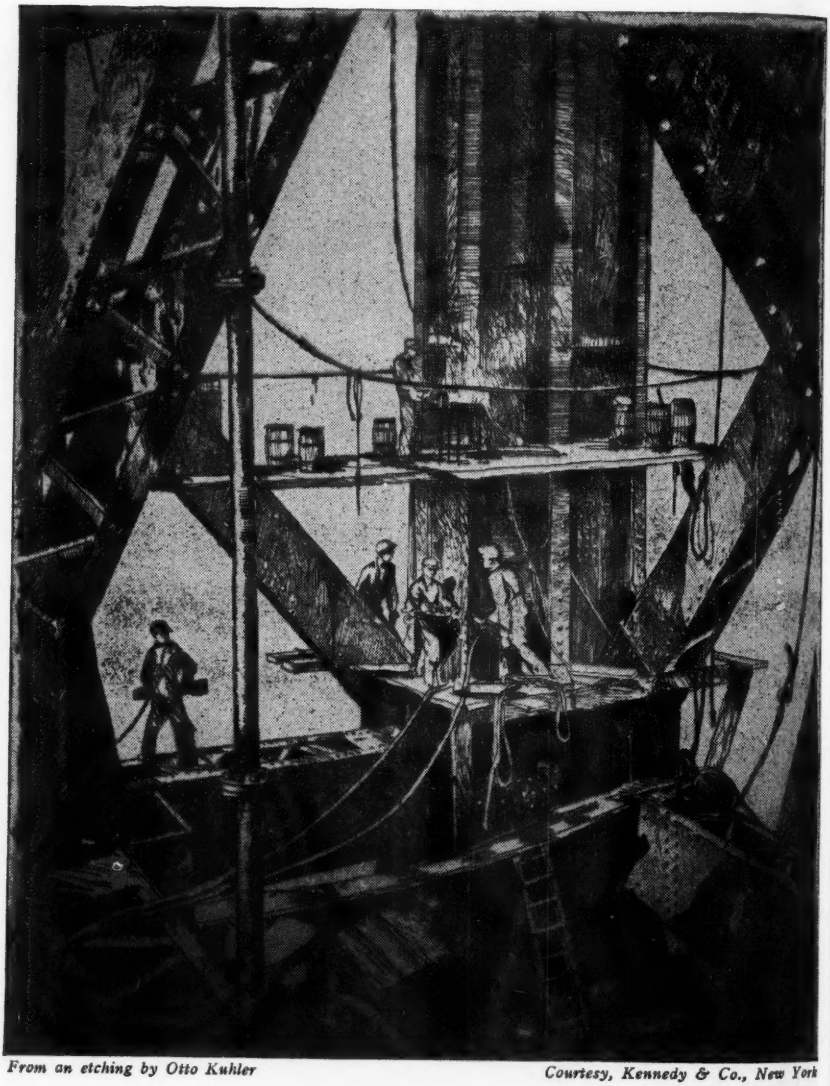
Utilities Almanack

JULY

18	T^h	¶ *National Association of Broadcasters will hold convention, San Francisco, Cal., Aug. 4–7, 1940.*
19	F	¶ *Appalachian Gas Measurement Short Course will be held, University of W. Va., Morgantown, W. Va., Aug. 19–21, 1940.*
20	S^a	¶ *State Municipal League of Utah will convene for session, Logan City, Utah, Aug. 22–24, 1940.*
21	S	¶ *International Association of Electrical Inspectors, Southwestern Section, will hold annual meeting, Santa Barbara, Cal., Aug. 26–30, 1940.*
22	M	¶ *American Institute of Electrical Engineers will hold Pacific Coast convention, Los Angeles, Cal., Aug. 27–30, 1940.*
23	T^u	¶ *Pennsylvania Electric Association will hold meeting, Bedford Springs, Pa., Sept. 4–6, 1940.*
24	W	¶ *American Society of Civil Engineers opens convention, Denver, Colo., 1940.* ¶ *Michigan Independent Telephone Association starts meeting, Lansing, Mich., 1940.*
25	T^h	¶ *League of South Dakota Municipalities will hold meeting, Pierre, S. D., Sept. 5, 6, 1940.*
26	F	¶ *Rocky Mountain Electric League will hold annual convention, Albuquerque, N. M., Sept. 9–11, 1940.*
27	S^a	¶ *Illuminating Engineering Society will convene for meeting, Spring Lake, N. J., Sept. 9–12, 1940.*
28	S	¶ *Pacific Coast Gas Association will hold annual convention, Coronado, Cal., Sept. 18–20, 1940.*
29	M	¶ *Indiana Electric Association will convene for session, French Lick Springs, Ind., Sept. 25–27, 1940.*
30	T^u	¶ *American Transit Association will hold annual convention, White Sulphur Springs, W. Va., Sept. 21–26, 1940.*
31	W	¶ *Empire State Gas and Electric Association will hold annual convention, Rye, N. Y., Sept. 26, 27, 1940.*



From an etching by Otto Kuhler *Courtesy, Kennedy & Co., New York*

The Riveters

Public Utilities
FORTNIGHTLY

VOL. XXVI; NO. 2 JULY 18, 1940

National Defense and Our Transportation Policy

With nearly a third of the entire railroad mileage in the country still being operated under receivership, the burdens and responsibilities imposed upon our transportation system during this critical period of rearmament pose a disturbing problem. What is necessary to insure an effective transportation policy?

BY HAROLD D. KOONTZ

PERHAPS at no time in the history of the United States has there been a greater need for a wise and uniform national transportation policy. The threat to democratic principles by recent events in Europe necessitates a reëxamination of regulatory and promotional legislation affecting our economic system. Defense of American democracy is not only a matter of adequate naval and military facilities, but also a question of efficiency in the operation of our economic machine. As has been proved so often, no industry is more important to national defense and to the efficiency of other business than transportation. It is of the greatest public interest to determine whether the governmental program in the transport field contributes to that efficiency and whether proposals for reform are aimed in that direction. Moreover, if an emergency defense plan is believed to be necessary, the transportation situation should not be overlooked.

With exceptions here and there, the economic situation of the transportation industry has been critical since

1930. Unlike many other industries, transportation has not regained its financial health. This is, of course, particularly true of the railroads. Water carriers have been in an even more precarious position. The war in Europe has disorganized foreign commerce, and competition among carriers has impoverished internal water carrier business. Typical of much of the water carrier business is the report of the United States Maritime Commission that shipping lines owned by the government and chartered to private managers failed to earn operating expenses in 1939.

MOTOR carriers of freight have also had difficulty in operating profitably, the Interstate Commerce Commission reporting recently that large carriers of property spent 94 per cent of their revenues in 1938 on operating expenses alone. Despite an improvement in traffic in 1939 and early 1940, the finances of motor carriers are far from encouraging. Air lines likewise have had rather discouraging earnings. Only two of the major air lines had net income in 1939 which can be regarded as at all satisfactory; and 1939 was the most profitable year in the history of commercial aviation. The only notable exception to the economic deficiencies in the transportation industry are the pipe lines. Low operating costs and favorable business connections have made these carriers very prosperous.

While all agencies of transportation are important to the efficient working of the economic system, the railroads are at the foundation of national and international commerce and the prosecution of national defense, whether in time of peace or war. The vital importance of the railroad system is obvious when one considers that nearly 65 per cent of the total revenue ton miles of freight traffic in the United States is carried by rail, and that mass movements of troops, armament, and supplies in time of war are largely dependent upon railroads. The experience of belligerents in the war in Europe amply demonstrates how control over railroads contributes to or impedes defense.

For purposes of orderly peace-time commerce and successful defense, the railroad system of a country must be prepared to give the service expected of it. This, in turn, means that the railroad system must be in a healthy financial position so that new capital will readily flow into it; that road and equipment must be in first-class operating condition and capable of ready expansion of facilities to meet needs; and that the individual parts of the system must be so organized that coördinated effort may be easily forthcoming. Let us see how American railroads measure up to these standards.

MORE than 31 per cent of the railroad mileage of the country is still operated by companies in the hands of trustees or receivers. In spite of improved business in 1939, railroad revenues were still 25 per cent below 1930; income available for fixed charges and dividends was 32 per cent below 1930; and income after fixed charges was 72 per cent less. Earnings upon investment in property used for transportation service were only 2.26 per cent in 1939, as compared to 3.28 per cent in 1930.

The inadequacy of railroad earnings is made more dramatic by not-

ing in the past nine years that the rate of return on investment has averaged less than 2 per cent. Even if the rate of return on rate-making value were considered, the average would not be more than 2½ per cent. Many railroads have not been able to meet fixed charges and only a few more fortunate carriers have paid any dividends on stock. Such a financial position is hardly conducive to a free flow of private capital into the industry.

Although the railroads are apparently handling present traffic with efficiency and dispatch, there is reasonable doubt that they would be able to meet all the demands of mass transportation necessary for defense. Maintenance expenditures in 1939 were slightly more than two-thirds those of 1930, and the average since 1930 has been approximately the same. Capital expenditures in 1939 were less than one-third those made in 1930 which was about equal to the average for the past nine years. The railroads have apparently been forced to follow the policy of awaiting a revival of traffic before making maintenance and capital expenditures, since the amount so charged has varied roughly with gross revenues.

THE adequacy of equipment for defense demands is open to question. Approximately 68 per cent of all locomotives in service are over twenty years old. In the month of peak traffic in 1939, the surplus of freight cars declined to 64,000 as compared to the minimum surplus of 107,000 in 1929. At the peak of 1939 business, the reserve of freight locomotive capacity fell to 10 per cent of total capacity, a reserve which is too low to meet possible defense needs. Recognizing that the railroads are using equipment more efficiently than they did ten years ago, the fact remains that installations have lagged far behind retirements for many years. The data in this connection for the years 1932-1938 may be enlightening and are shown in the table below.

The possible shortage of equipment in case heavy demands are made on the railroads is alleviated somewhat by the existence of unserviceable cars and locomotives many of which could be put into service in a relatively short time. At the end of 1938, for example, there were 42,442 locomotives held by railroads of which 7,881 were in an unserviceable condition. At the same time, there were 1,682,000 freight cars

RAILWAY EQUIPMENT INSTALLED AND RETIRED

Class I Steam Railways (excluding switching and terminal companies)

	Locomotives			*Freight Train Cars*			*Passenger Train Cars*		
	Installed		*Retired*	*Installed*		*Retired*	*Installed*		*Retired*
		New			*New*			*New*	
Year	*Total*	*Units*	*Total*	*Total*	*Units*	*Total*	*Total*	*Units*	*Total*
1932	477	90	2,316	8,545	2,815	69,394	579	58	1,928
1933	268	14	2,681	6,410	1,936	117,268	607	7	3,443
1934	312	90	2,912	31,366	23,948	129,026	703	270	3,368
1935	424	139	2,150	18,496	6,987	122,346	730	225	3,049
1936	1,054	98	1,798	75,979	37,554	131,754	1,123	159	1,631
1937	877	441	1,321	91,128	69,118	105,324	1,074	576	1,413
1938	395	252	1,237	25,721	15,213	70,235	642	275	1,592

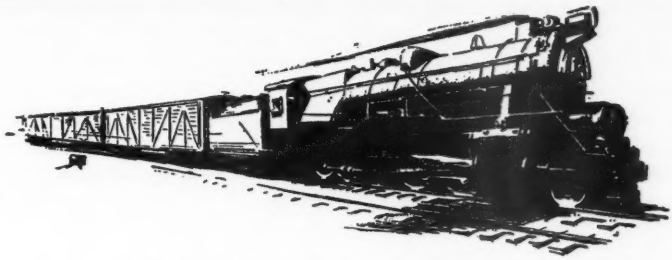
Source: U. S. Department of Commerce, *Survey of Current Business*, December, 1939, pp. 14, 15.

and 232,000 of these were classed as unserviceable. Some of this equipment is hardly worth salvaging, but a large part could be pressed into service if major repairs were effected.

FROM the point of view of coördinated organization, the American railroads offer serious question. Government insistence upon competition in the railroad field despite the grand consolidation scheme envisaged by the Transportation Act of 1920, the financial and other difficulties in bringing about consolidation or systematic coördination, and the individual jealousies and rivalries of railroad managements have brought about a transportation system made up of numerous independent companies. These hundreds of companies have done well in working out interchange of traffic and through routing, but genuine coördination of facilities is the exception rather than the rule in the railroad field. The most efficient utilization of road and equipment, whether for defense needs or for normal peace-time commerce, necessitates far more pooling of facilities than now exists. It does not seem to matter much how this pooling is accomplished. Consolidation, lease, or coördination through formal agreements between carriers would serve the purpose. One thing does seem clear. So long as competition between many independent railroads is encouraged or allowed, the railroads cannot be expected to yield the most efficient and expeditious service.

The lack of united organization in the railroad field is supplemented by a similar situation in other fields of transportation. And extremely little coöperation exists now between railroads and other carriers. As private ownership is now set up in the transport industry, shipments cannot always be sent by the most economical and the fastest means. Interests of individual carrying companies in making their greatest profits, the natural insistence that the property rights of each owner be protected and promoted, and the fact that carriers seldom monopolize a trade route, lead to savage rivalry between the many constituents of the transportation industry. Society can scarcely afford the luxury of so much competition in times of peace, let alone in times when efforts are being made to bolster national defense.

WHAT lies behind the status in which transportation finds itself? It is not easy to answer this question in a comprehensive fashion. But certain contributing causes can be pointed out. The depression following upon 1929 has had its effect, but the transportation industry and the railroads in particular have not responded to recovery nearly to the extent that other businesses have. The growth of competition between carriers accounts as much as any one thing for the present impoverished situation. The private automobile and truck, the commercial motor vehicles, the water carriers, the pipe lines, and the air carriers have been giving the railroads and each other increasingly vigorous competition. This competition has not only taken traffic from the rails, but it has forced the railroads to lower rates on some of their more lucrative business in order to stem the tide of traffic diversions to other agencies. As competition from other forms has increased in vigor, competition among railroads them-



Importance of Railroad System

"THE vital importance of the railroad system is obvious when one considers that nearly 65 per cent of the total revenue ton miles of freight traffic in the United States is carried by rail, and that mass movements of troops, armament, and supplies in time of war are largely dependent upon railroads. The experience of belligerents in the war in Europe amply demonstrates how control over railroads contributes to or impedes defense."

selves has often tended to become sharper.

ONE reason for this competition and for the tendency of rates to be whittled below profitable levels is the existence of numerous independent companies.

There has been an oversupply of transport facilities in certain areas and wasteful duplication of services. Many transport companies operate at far less than capacity. Many waterways and occasional highways are built without investigating whether these ways are socially desirable in the light of their costs. The overbuilding of transportation facilities has been a feature of railroad, as well as waterway and highway, development. But in recent decades the government has heavily subsidized the water carriage business and to a lesser degree the motor carrier business by furnishing ways and not charging their full cost in taxes or tolls.[1]

WHILE the existence of an oversupply of transportation facilities may seem to be inconsistent with the concern expressed in this article over the adequacy of the national transportation system, the apparent anomaly is not difficult to resolve. In the first place, surplus transportation facilities are not always placed where the need for transportation is the greatest, particularly for defense. In the second place, there may still be use of the highways, railways, and waterways at far

[1] In a report recently published by the former coördinator of Transportation, ICC Commissioner Eastman, the conclusion is made that highway users pay their full share, although perhaps certain large trucks do not. Because the cost allocations in this study may be rather favorable to the users, the conclusions may be open to some question. No question exists, however, but that large subsidies are enjoyed by water carriers. See *Public Aids to Transporation,* Vol. I, pp. 20-30.

less than capacity; and with the severe competition such a situation engenders, individual carriers may not be in a good enough financial condition to expand services on these ways when that service is demanded. Moreover, a lack of sensible planning in the expansion of transportation facilities, both by private management and government, may so interfere with orderly conduct of transportation that costs, rates, and traffic of each mode of carriage will not reflect relative economic advantages.

Another cause of the difficult railroad situation is the labor problem. Wages on the railroads have not been allowed to fall with the economic worth of railroad labor service. Operating rules are obsolete and restrictive, so that most of the gains of improvements in operating efficiency are thwarted by these rules or absorbed by higher wages to train service employees. The high and inflexible nature of railroad wage costs has been aided by legislation or threats of legislation. State full-crew laws or train-limit laws are actually generally make-work laws, rather than safety laws. Railroad workers are given old-age insurance which is more favorable and more costly than the insurance provided under the Social Security Act for other workers.

Under the threat of having legislation passed which would forbid railroads to consolidate or coördinate if labor would be displaced as a result, the railroad managements have entered a "voluntary" agreement whereby a railroad worker who loses his job as the result of a combination is given a dismissal allowance equal to 60 per cent of his pay for periods ranging from six months to five years. Moreover, the Interstate Commerce Commission has held the railroads to be responsible for taking care of workers displaced by combination, and has been upheld by the United States Supreme Court in doing so. While this sort of thing may be a good social policy, it is doubtful whether the full cost should be saddled on the individual privately owned company.

INCREASED costs of fuel and supplies have hindered the railroads. With the existence of war in Europe and the monetary and fiscal policies of the government at home, these costs may be expected to rise. Taxes have also increased. For an industry as depressed as the railroad industry, the steady rise of state taxes makes one wonder whether the states have realized that taxation should follow ability to pay, and property taxes should reflect the downward trend in value of railroad property.

Admittedly, the financial structure of most railroads has shown signs of poor managerial policy. Railroad debts have been too large a portion of the financial plan, with an average of more than 56 per cent debt to total stocks and bonds. The railroad debt policy has been shortsighted. Many railroads could have replaced a good part of this debt by selling common stock in the nineteen twenties, but managements interested in maintaining control were not disposed to do so. On the other hand, if the railroads had been allowed to earn higher rates some years ago when these rates could have been collected, perhaps some of this debt could have been retired, or new road and equipment might have been purchased by not resorting to the sale of bonds. To be sure, some of these bonds in in-

dividual railroads are leftovers of the period of high finance of the late twenties and earlier. There are some instances where no excuse can be given for railroad practices. But there are other cases where losses occurred because railroads bought stock control in weaker roads; and roads were encouraged to do so as a prelude to consolidation under the plan following the act of 1920.

THE government has some responsibility for the present plight of the transportation industry. Rates of railroads were kept down in years when they might have been collected. The Transportation Act of 1920 even contemplated a 6 per cent return on investment as the maximum allowable, and this meant that many railroads would not earn so much. The government has regulated the railroads as though they were monopolies, placing them under strict requirements as to rates and service. At the same time the government has insisted upon competition between railroads and between railroads and other carriers.

Although legislation to encourage consolidation, coördination, and pooling has been passed during the last twenty years, every one of these laws required that competition be preserved. The government has been inconsistent in other respects. It has placed all railroad regulation except the regulation of railroad labor under the Interstate Commerce Commission. Thus, one of the most important of the problems with which railroads have to deal is outside the commission. It has regulated the railroads quite thoroughly, but left the interstate motor carriers unregulated until 1935. Even now, these regulations extend mainly to the common motor carrier, somewhat to the contract motor carrier, but practically not at all to the private carrier of freight. The inland water carriers, except for the Great Lakes, are still free of any Federal government regulation, and other water carriers are regulated only to a slight extent, or rather perfunctorily by government agencies interested in promotion of water commerce. Further gaps in regulation occur in the almost complete lack of control over the supply of highways and waterways. No government agency has the power to approve expenditures in these ways as being necessary and in the public interest.

THE criticisms of government policy can be summed up in terms of inconsistency and lack of direction. We regulate as monopoly but we insist upon competition. We regulate rates and service carefully in a part of the transport field and leave them practically unregulated elsewhere. We con-

❦

¶ "MORE *than 31 per cent of the railroad mileage of the country is still operated by companies in the hands of trustees or receivers. In spite of improved business in 1939, railroad revenues were still 25 per cent below 1930, income available for fixed charges and dividends was 32 per cent below 1930, and income after fixed charges was 72 per cent less.*"

trol new construction of railways and allow new construction in other places to be dictated by the political considerations which enter a highway or rivers and harbors bill. We look for ways to make the transportation system operate more efficiently, and yet we pass laws increasing railroad labor costs, hampering efficiency, and appropriating funds to hinder, rather than help, transportation.

Although it is not to be inferred that the major part of government regulation and promotion has been a failure or contributed to the transportation muddle, there is room for improvement in the laws and appropriations respecting transportation. Now that the desire for adequate defense seems to be uppermost in the minds of the public, it may be possible to approach the transportation problem with the public interest predominant. Group interests and selfish desires might be expected to give way to the consideration of transportation as a social problem. If this attitude can prevail, both emergency needs and long-term needs of the transportation industry can be studied and helpful transportation legislation evolved.

THE measures which are most needed to aid are rather generally recognized. Of an emergency nature, an increase in railroad equipment reserves and a formulation of a plan for coördinated action of all principal carriers seems to be required. For a longer term program the transportation problem demands a comprehensive plan for equalizing regulation, a revamping of regulatory and other measures hampering efficiency, an investigation into, and legislation to bring about, coördination of transportation facilities in line with efficient operation, a study and review of promotional expenditures by government to accomplish the development of an economical system of transportation, and legislation which will remove the inconsistencies in the present program of the government.

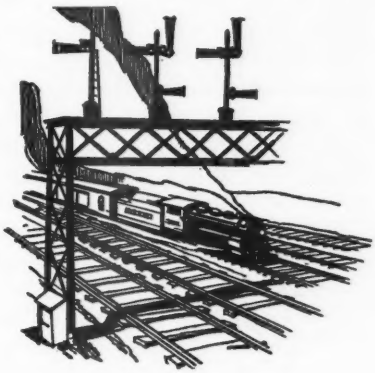
As for the emergency program, the development of adequate equipment reserves cannot be left to the private initiative of the railroads. The lack of railroad prosperity makes it improbable that these reserves will be built up to the point necessary to provide for defense. Nor does it seem fair to force the railroads to carry the burden of costs involved in enlarging equipment reserves beyond normal peace-time commercial requirements. Proposals to make equipment loans to the railroads do not meet the problem. Most railroads can obtain those loans from private capital if the railroads are willing to undertake the financing costs. Instead of loans, the government would be justified in making outright expenditures from defense funds for the modernization of old equipment and the purchase of new equipment.

Title to such equipment could be placed in the hands of a government agency which could hold and maintain the equipment until such time as the railroads might need it. The railroads could be given the opportunity to purchase the equipment or use it under lease. Thus, the burden of maintaining equipment reserves would be placed upon the government.

IF the turn of events proved that the equipment was needed, the cost would be borne by the railroads. Otherwise, the cost would be undertaken by

Responsibility for Plight of Railroads

"THE government has some responsibility for the present plight of the transportation industry. Rates of railroads were kept down in years when they might have been collected. The Transportation Act of 1920 even contemplated a 6 per cent return on investment as the maximum allowable, and this meant that many railroads would not earn so much. The government has regulated the railroads as though they were monopolies, placing them under strict requirements as to rates and service."



the government as a part of its defense program. As compared to the billions being spent for military and naval equipment and personnel, the few hundred million necessary for building up railroad equipment reserves would seem small. Moreover, precedent exists for such a step in the plan now in effect whereby the government underwrites some of the costs of expanding airplane production.

Coördinated organization is as important to adequate transportation as complete physical equipment. Under the Interstate Commerce Act, the President may already direct the railroads to give priority to movements of troops and war materials in time of war or if war is threatened. In times of emergency, the Interstate Commerce Commission has authority to exercise almost dictatorial powers over the distribution of car supply. In recent months, also, much publicity has been given to the National Industrial Mobilization Plan. Under this plan, as worked out by the War Department, provision is made for virtual dictatorship over all American industry by the President.

Among other features of this plan, organization of the transportation industry under a temporary civilian agency is provided. While these plans are worked out in fair detail, additional legislation might provide for the establishment of an agency with power to investigate immediately needed coördinations and policies necessary for coöperation for national defense. This agency could set up the numerous agreements necessary for expedited service, the exact basis for making priorities in shipments, the compensation for service, and the machinery for managing such a huge coöperative endeavor. The plans for coördinated organization should not stop with the railroads, but should embrace the water carriers, the pipe lines, and the motor carriers as auxiliary services to the railroads.

In the haste to provide an emergency program for national defense, a long-range program should not be overlooked. The longer-term program of dealing with the transportation problem which the writer proposes has been subject to study in most of its aspects by Congress for several years. But in spite of the fact that general agreement has existed that a new program of transportation legislation has been needed, selfish interests in Congress have thwarted the adoption of such legislation. Although differences exist as to the content of a new transportation bill, it seems to the writer that there are several major legislative changes which should be incorporated into new legislation.

In the first place, regulation should be extended to remove inequalities in the present program of control. Since competition has long been forsaken as a regulator of transportation matters, this appears to be the only logical move. Regulation over water carriers should be extended to cover all such carriers, and control over those in interstate commerce should be vested in the Interstate Commerce Commission. Control over contract motor carriers and private motor carriers ought to be extended as far as may be necessary to give the commission power to work out regulations encouraging coördination between these carriers and other modes of transport.

The present restriction on commission control over motor carrier operations in intrastate commerce should be relaxed to allow the commission to remove hindrances to interstate commerce. The commission might also be given the power to enforce uniformity as between states in motor vehicle requirements for carriers in interstate commerce. This would help in solving the carrier aspect of the problem of interstate trade barriers, since these regulations become barriers largely because of their lack of uniformity. Furthermore, as the air carriers assume greater and greater commercial importance, the possibility of placing regulation of their rates, service, and finance under the Interstate Commerce Commission should be considered.

Equality of regulation as between carriers should be supplemented by completeness of regulation within each field. Commission control over outside investments of carriers should be provided for, so that unscrupulous or overenthusiastic promoters cannot squander carrier funds in schemes not directly related to transportation needs. The commission should also be given jurisdiction over labor matters, with power to force arbitration on wages and working rules. These are closely tied up with the whole problem of adequacy of rates and economical transportation and should be considered by the same governmental agency. If constitutional, as this writer believes it to be, the commission might also be given the power to investigate and remove inequalities in taxes on carriers, whether state or Federal, if the commission finds that these taxes place an undue burden on the proper functioning of carriers in interstate commerce.

Legislation should provide for a special board of investigation to study the relative economy of each type of carrier and to make recommendations to the commission for the fixing of rates and the enforcement of pooling or other combination measures which

will bring about proper coördination of transportation facilities. In addition, the board should be given authority to study all Federal government appropriations for transport facilities, such as highways and waterways, with a view to determining the social need for such expenditures. Either this board or the Interstate Commerce Commission might be given power to approve such appropriations where found to be in the public interest. In such a way, control over the supply of transportation facilities, now in effect for most private expenditures, would be supplemented by authority over government-furnished services.

THE time seems ripe for a more vigorous policy in regard to transportation combination. With the development of regulation and the filling of gaps now existing in regulation, reliance upon competition should be abolished. Present regulation designed for control of monopolies should be accompanied by the encouragement of monopolies. Subject to study by the investigation board mentioned above and approval by the Interstate Commerce Commission, encouragement should be given to combination by pools, traffic agreements, consolidation, or other means. Restrictions on railroad ownership of water carriers and motor carriers should be removed. The costs of paying railroad labor a dismissal wage for displacement by combination should be shifted from the railroads to the government, if it is deemed desirable to grant these workers protection which workers in other fields do not have.

Not only should railroad monopolies be encouraged, but transportation monopolies as well. To keep these organizations at a manageable size, they might be restricted to certain traffic regions. Transport monopolies would surely reduce competitive wastes, lead to automatic coördination of facilities, and better organization of service. They would necessitate close regulation, but, with the reduction in the number of companies, this regulation could hardly be more complicated than that which exists at present. Indeed, combination may be so important to the development of an efficient and economical transportation system that mere encouragement by government and voluntary coöperation by carriers would be inadequate. Compulsory measures might be undertaken, or suggestions could be left on a voluntary basis for a period of time, to be followed by compulsion. As destructive to private rights and liberties as this may appear

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to be, it is hardly less so than many regulatory measures in effect or the prospect of government ownership and operation.

IN the interests of good government and the most economical expenditures of funds for transportation, promotional functions should be brought together under one governmental agency. There are some 7 Federal agencies with a part in highway development, 8 aiding air commerce in some way, and 14 with promotional duties in respect to water carriage. Appropriations have been made for specific projects. Most of the expenditures made have in no wise been related to the picture of transportation as a whole and there is little evidence that the Federal promotional program has been evaluated in terms of the relative merits of spending for facilities needed most by the public.

Furthermore, by placing promotional duties and regulatory duties under the same agency, as is exemplified by the case of the water carriers under the Maritime Commission, difficulty is encountered in obtaining regulation interested only in developing a sound and economically coördinated national system of transport. Not only should promotional functions be consolidated under a single administrative agency, but regulatory functions should be unified in one commission, preferably separate from the promotional agency but with some authority over the question of supply of transportation facilities.

Many minor amendments to present transportation legislation could be suggested. Statutes requiring reduction of rates for government traffic on land grant railroads should be repealed. Railroads should be relieved from the burden of disproportionate contributions to grade-crossing eliminations and reconstruction of bridges in connection with improvements of navigable waters. The long-and-short-haul clause applicable to railroads might be repealed without seriously relaxing regulation. Loans might be made to carriers needing capital for bringing deferred maintenance up to date; but loans do no more than put off a day of reckoning. These and other relatively minor measures could well be enacted. But steps to resolve the principal difficulties in which transportation finds itself necessitate a major operation in legislation with changes in the broad principles involved.

WHAT is the prospect that one or more of the major changes suggested by the writer will be enacted into law? An emergency program always has excellent chances, but one which goes to the roots of a problem generally meets stout resistance. However, broad changes in transportation legislation were enacted in 1906 and in 1920. Carrier regulation was materially extended by the Motor Carrier Act of 1935, the Air Commerce Act of 1926, and the Civil Aeronautics Act of 1938. But no overhauling of the statutory structure has occurred since 1920. A recanvassing of transportation needs and a rewriting of legislation are long overdue. The common desire to make the United States impregnable to invasion may well cause groups with selfish interests to coöperate in the formulation of a legislative program which will lead to a far more efficient transportation system.

A start toward a sound national

policy might have been made several years ago. The transportation problem has been subject to special study by several groups of experts for some time and new legislation has been suggested. Measures designed particularly to help the railroads were dropped in 1938 largely because railroad managements dared to offend organized labor by suggesting a wage cut. A transportation bill which would have represented a good start toward consistent and sound transportation policy was passed by the Senate in 1939 and a different bill with generally good provisions went through the House later in the year. After months in conference, a compromise bill was brought to Congress in May, 1940. While the compromise bill still left many issues of transportation policy to be dealt with later, it was the closest approximation to a sound revamping of the program of transportation legislation since 1920. This bill was recommitted to the committee by the House and lost for the session with little possibility that anything further would be done by the same bill.

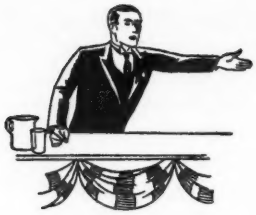
IT is interesting to note the reason for the demise of the Transportation Act of 1940. Railroad labor brought its powerful forces to bear against it because the bill did not guarantee that no consolidations or abandonments of service would displace workers. A guaranty was insisted upon in spite of the agreement already in effect for dismissal allowances to the displaced workers.

Proponents of waterways and the pork-barrel philosophy of waterway expenditures fought the bill because it regulated water carriers and because conferees refused to adopt an amendment which would have sabotaged effective rate control between water carriers and railroads. A portion of the agricultural bloc in Congress withdrew support of the bill because an amendment to force the Interstate Commerce Commission to make certain favorable rates for agriculture, irrespective of the economic aspects of rate making, was not included in the act.

Whether the political pressure of group interests can be expected to give way before the broader social interest in a sound and efficient transportation system is open to question. If proper leadership can be obtained and if the needs of transportation can be seen in their true light, the present emphasis upon defense may lead to a submergence of selfish interests and the passing of a wise transportation bill. It may even now be too late to save the railroads and some of the other agencies of transportation from government ownership. The defense of democratic principles from threats abroad should not overlook the fact that a healthy system of free private enterprise at home is the best guaranty of the continuation of democracy.

Every Little Bit Helps

THE Duke Power Company, largest taxpayer in the city of Charlotte, N. C., recently sent the city $60,428.06 for taxes. The city sent back to the utility a 1-cent rebate, the smallest paid. The refund was mailed in a 2-cent envelope.



The Creeping Paralysis of State Socialism

We hear much argument these days about the basic repugnance between various forms of government—Democracy, Fascist dictatorship, Communistic socialism, and their variations. This author questions whether any elastic reconciliation can be accomplished within the framework of the same government by the forces of expanding socialism and the vested interests of a diminishing private enterprise. Utility service is discussed as an obvious industrial case history.

By MILLARD MILBURN RICE

VARIOUS terms — profit system, private enterprise, capitalism, individualism, competitive society, free economy, and so on—are applied to the economic system under which the free peoples of the world live. By whatever name it is called this system is the complement of—and a necessity to—political freedom. The relationship is somewhat like that of the classic hen and egg: Nobody is prepared to say emphatically which is more important, but each is necessary to the other.

Free economy represents the development not of a theory but of an instinct. It is the result of the long, long hope of mankind to be free of economic and political fetters. With all its defects, the individual living under it is freer of economic and political domination than he has ever been before, and enjoys the highest level of average comfort the world has ever known. Economic restraint exists chiefly in individual limitations, and the power of government over the individual is very definitely limited. The keystone of a free economy is divorcement of economic life from political domination.

WE sometimes speak of the *theory* of private enterprise or free economy. Actually there is no such thing. There is no theory of freedom. But the most elementary theorizing about free economy makes it apparent at once that it cannot be half free and half something else and remain itself. Freedom diluted is no longer freedom. Any other system combined with free economy exists at the expense of that free economy and hence drains off its benefits to the extent the other system develops. This is true because any other system is necessarily nonprofit, and must depend for at least part of its

support upon the profit system itself. Moreover, the invasion of the field of the profit system by a nonprofit system obviously limits to that extent the field of operation of the profit system. The larger the slice cut from a pie, the less pie is left on the plate.

The major system in opposition to the profit system is state socialism of some variety. This is enterprise carried on by government. In recent years a number of the states of the United States have experimented in varying degrees with state-socialistic enterprises, and the national government has set up such enterprises as TVA. Government regulation—state and national—of railroads and public utilities has been practiced for a considerable time.

In that connection, it is interesting to note in passing that agitations for extension of state socialism in the United States—here called government ownership—are most vigorous at the present time in those industries now under government regulation. There is serious talk of government ownership of railroads, and in connection with the development of TVA the national government has used its power to bring about acquisition of certain privately owned utility systems. Without in any sense discussing the merits of government regulation, we can, nevertheless, raise the question as to whether it is always a preliminary step to government ownership.

UNLIKE free economy, state socialism rests upon a theory — the theory that government can run the economic machine more cheaply, more efficiently, and more fairly than it is run under a free economy. Grandstand quarterbacks never run the wrong plays, and bleacher umpires always call the close decisions right. Unlike free economy, state socialism is revolutionary rather than evolutionary, for it seeks to displace the present natural order and set up its own theoretical system. Like the critical fan at the game, it can always run the team better than the present manager.

Obviously, state socialism and planned economy are brothers under the skin—for, in each, government does the planning. In order not to be drawn into a discussion of political theories, we shall not here do more than point out that under such a system the individual loses his economic freedom certainly and immediately, and his political freedom eventually. There is absolutely nothing in history, ancient or modern, to indicate that either an individual or a group can be safely entrusted with complete power over anything. It would require more than one Hatch Act to control the political activities of the horde of bureaucrats necessary to administer any such system—if, indeed, a Hatch Act could be passed in the face of the tremendous opposition that horde could muster.

Ventures in state socialism can be made to appear immensely attractive when intriguingly presented to the citizens of a capitalistic state. Although government in a free economy is limited to strictly governmental functions, evangelists of state socialism—who may be and sometimes are members of that government—can point out the weaknesses and inequalities in the functions of the competitive system, and make a convincing case for their own abilities to do the job better. They have all the qualities and prerog-

atives of back-seat drivers. Having nothing of their own at stake, they can point out all the economic curves taken on the wrong side; all the economic stoplights passed; all the improper economic signals given; all the economic speed violations.

SPECIFICALLY, they can show that under the profit system greed is sometimes exercised; the consumer is sometimes saddled with costly mistakes and excessive profits; labor is sometimes exploited. And then they can say that, under state socialism, the government would be social-minded toward both the laborer and the consumer; that, since it is under no obligation to make a profit, it could and would divide that profit between consumers and labor; that, since government exists for the equal benefit of all, inequalities would disappear under a system of state socialism.

These are attractive promises, and some interesting attempts have been made to deliver on such promises. For instance, as this is written, a brief Associated Press item appears in the metropolitan newspapers announcing an exchange offer to holders of more than six million dollars of state of South Dakota rural credit bonds to complete a debt refunding program of more than twenty million dollars. More than two decades ago state socialism swept through the states of the Northwest like a prairie fire. It was fanned by the efforts of one Arthur Clarence Townsley and the Non-partisan League. That there were injustices and inequalities to be corrected no one will deny, but neither can it be denied that the last estate of those who attempted this correction through the medium of state socialism was worse than their first.

The story behind the current South Dakota refunding offer is fairly typical. After ambitious experiments in rural credit, state hail insurance, state bonding, state coal mining, state bank guaranty, South Dakota liquidated its enterprises as of July 1, 1933. On that date there were rural credit bonds of South Dakota outstanding in the amount of $41,000,000. The state owned 1,450,000 acres of land through foreclosures on its rural credit program, and the estimated loss in that department ran from twenty million dollars up to thirty-five million dollars. The state hail insurance venture had nearly a half-million dollars of uncollected premiums—it is no easier to pay premiums to the state than to privately owned enterprise—and had borrowed nearly four hundred thousand dollars additional. The bank guaranty fund had assets of less than a million dol-

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lars and liabilities of thirty-five million. Other ventures were proportionately in the red.

OFFSETTING these liabilities in South Dakota were claims of reduction in insurance premiums and coal prices because of the "yardstick" effect of the state enterprises. In that connection, however, it is fair to ask of what value is a yardstick of this type which by its own performance shows that it fails to reflect the true costs of enterprises—which is actually a club instead of a yardstick — and which can afford to be wielded only because there lies behind it a great reservoir of privately owned taxable property.

Liquidation of these losses by present refunding operations is possible only because there still exists in South Dakota valuable property in private hands subject to taxation. The refunding bonds bear maturities ranging from 1950 to 1959, which is obvious notice that the liabilities of the state socialistic efforts are to be liquidated by future taxation of private property. At least until 1959, private enterprise in South Dakota must struggle under this burden imposed by state socialism, and hence cannot return its full benefits during that period.

The claim is made for state socialism that this is true economic democracy. It is claimed that since all enterprises are state owned and are therefore the property of all the people, this is the essence of the democratic principle. There is little doubt that a majority of the people of South Dakota favored the establishment of the state-owned enterprises into which that state entered. That was a special case, designed to overcome specific grievances which had aroused the people of that state. But the essence of state socialism lies in the planning of enterprises by a general staff of planners who are declared to be superior in knowledge, foresight, wisdom, and fairness to individuals working separately for their own interests. If this is not so, then there is no virtue in state socialism.

WHILE, therefore, the people of South Dakota evidently favored entering into their state socialistic enterprises, there is no guaranty that enterprises may not be undertaken under state socialism which the people will oppose, for there can be no efficiency in a society which must submit its every act and venture to all the whims and vagaries of popular opinion. Every proposal immediately becomes a political football. What, for instance, is there to indicate that the majority of the people of the United States favored the TVA venture? Or the huge project known as Bonneville dam? Funds were taken from the proceeds of private enterprise and used in these and other projects without specific popular approval. Every taxpayer was made, without his consent—certainly without his specific consent—a stockholder in these enterprises.

Conversely, however, in private enterprise a stockholder becomes such by his own volition. The buyers of stock in the American Telephone and Telegraph Company, for instance—and there are nearly one-ninth as many stockholders in this one company as there are payers of individual income tax — buy solely because they believe in the management and the profit pos-

Socialism in a Capitalistic State

"VENTURES in state socialism can be made to appear immensely attractive when intriguingly presented to the citizens of a capitalistic state. Although government in a free economy is limited to strictly governmental functions, evangelists of state socialism—who may be and sometimes are members of that government—can point out the weaknesses and inequalities in the functions of the competitive system, and make a convincing case for their own abilities to do the job better."

sibilities of that company. If freedom to act is one of the foundation stones of democracy, it is obvious which system of ownership is most free economically.

How maintain political freedom under any other system than that of private enterprise? Even if every issue is submitted to the people there is no guaranty that, once election is achieved on the basis of certain solemn promises, those promises will be kept. We have already seen too much of that sort of thing under our present system, and billions have been squandered by officials elected on platforms promising economy and retrenchment.

PLACE almost unlimited economic power in the hands of bureaucracy and its attitude becomes a public-be-damned one. If that attitude shows its head in private enterprise, however, free competition soon punishes the offender by grabbing off his markets and cutting into his field by rendering more gracious and efficient service than does he. Moreover, government is always in the background to act as arbiter and policeman in such cases, strengthening the hand of those who would serve best. Who is the policeman when government is in the economic saddle and its bureaucracy adopts the public-be-damned attitude —which, actually, is the all-too-well-known attitude of the bureaucrat? The long lines of customers clamoring for the barest necessities of life in more than one totalitarian state give the answer to that question.

What of the relative efficiency of private enterprise and state-owned enterprise? Comparison of freight rates per ton mile in the United States with those of the government-owned rail-

roads of France, Germany, and Denmark shows some interesting contrasts. In 1914, before the World War disturbed the economies of both Europe and the United States, the rate in France was 1.33 cents, in Germany 1.37, and 2.33 in Denmark, while in the United States it was 0.72 cents. This was in spite of a much greater density of population in the European countries which should have made possible lower rates than in the more thinly settled United States.

Construction costs of sister battleships in Navy Yards and private shipyards show striking contrasts in favor of the latter. This is true even in the face of failure to add to Navy Yard costs such overhead charges as use of yard facilities, general administration, taxes, and insurance.

In the public utilities field the 40-year period between 1882 and 1922 was one of continuous and sometimes rapid increase in the number of municipally owned electric light plants. The peak was reached about 1922, however, and since that time the decline in number of municipally owned plants has been rapid. There can be only one clear explanation of this, and that is the ability of cities to purchase power more cheaply from privately owned utilities than they could produce it themselves. Government doesn't give up ownership even in a free economy until forced to do so by pressure of costs.

A strikingly concrete illustration of what was taking place in this field occurred in the city of Frederick, Maryland. In 1915, a community leader spent considerable money and effort in educating the people of Frederick in the desirability of constructing a city-owned light plant. Approximately two decades later this same public-spirited citizen was just as actively urging the purchase of power from a privately owned utility because he was then able to show that this could be done at considerable saving. While in 1915 he was able to make a good case for municipal ownership, the efficiency of private enterprise in the utility field so far outdistanced efficiency of municipal ownership during the following two decades that he was obliged to shift his position completely.

Incidentally, this was a clear illustration of the democratic principle in the industrial field. Here was freedom to shift—a freedom freely exercised—from one type of ownership to another as efficiency shifted. Under a closed system of state socialism, wherein there is no other type of enterprise permitted, economic democracy is definitely defeated.

So long as limited state-owned enterprise is used as an honest yardstick—and not as a club—it probably furthers the principle of economic democracy. Whenever it can be honestly shown that private enterprise is not efficient enough to outstrip state ownership, then the results of state ownership are of definite value as a goal for private enterprise to attain.

The sad fact is that governmental yardsticks are seldom actually that. They start first with the yardstick of private enterprise and attempt, at all costs, to shorten it. Because governments pay no taxes to themselves they do not charge taxes as an overhead of their enterprises; likewise, frequently, with supervision and certain other items of overhead. The record is full,

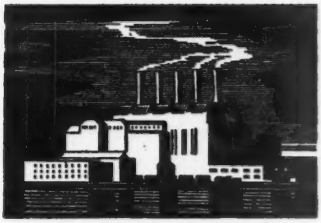
especially the utilities pages, of government-owned utilities whose stated costs do not reflect total costs as fair bases for comparison of their relative efficiency with that of private enterprise.

But carried beyond the limited field of the yardstick, government-owned enterprise defeats the principle of free and fair competition which is the basis of a free economy, and cripples rather than stimulates private enterprise. Government's slice of pie reduces that left for private business, and at the same time increases the burden on what private enterprise remains—for the whole pie was baked originally by individual initiative. Government costs rise rather than fall; and, since there is less private enterprise to be taxed, tax rates must rise.

POLITICAL subdivisions such as counties and municipalities, in which government takes over private enterprise and which have previously depended for revenue upon taxes on private business, find themselves financially embarrassed. They cannot tax government-owned property if it is Federal, and if they are themselves the governmental owners they cannot tax themselves. The experiences of some communities under TVA—experiences which have been discussed in these pages at some length—are excellent illustrations. In certain sparsely settled western counties as much as one-third of all tax revenue is drawn from railroads and utilities located therein. Abandonment or government purchase of rail lines or public utilities under such actual, though extreme, conditions is obviously disastrous for these political subdivisions.

At all costs the direct charge to the public for service of government-owned enterprises must be kept below that of similar privately owned business else the political effect is disastrous and there is popular demand for return to privately owned service. Under such conditions there can be only one solution for government. That is complete ownership to the point of monopoly so that there is no privately owned industry to provide a reverse yardstick with which to measure the costs of government service. The inevitable result must be an increase in rates to the public to increase funds in government hands with which to carry on other governmental functions.

HONEST yardsticks of government enterprise—which remain yardsticks and do not expand into clubs—are perhaps aids to economic democracy because of their stimulation of efficiency in private enterprise. They encroach upon but do not strangle private enterprise. The tendency, however, is always to extend the field of government enterprise once it is entered, for reasons we have seen. Actual conditions in several sections of the country already give proof of this. Thus these ventures in state socialism develop into direct competition with private enterprise, and afflict it with a creeping paralysis which finally becomes complete. There is only one end for any wholesale adventure into state socialism, and that end is the complete elimination of private enterprise.



The Effect of Europe's War On Canada's Utilities

Consideration of some of the doubts and fears which at the present time may be worrying American investors in Canadian utilities. Some of these fears, the author says, appear groundless and others exaggerated. No possibility of complete severance of the ties between Canada and Britain.

By FERGUS J. McDIARMID

A short time ago I enjoyed a very interesting telephone conversation with a well-informed gentleman in Toronto. The talk turned into a channel which only a few weeks before would have been considered entirely fantastic. Rather expecting something violent to happen at the other end of the line I put to him the question, "If the war in Europe ends in a complete Nazi victory, could you imagine Canada agreeing to pay reparations?" He exploded, "No! (Here three words censored.) Let them try to come over and collect!"

Not being content to let bad enough alone I posed another one, "Can you conceive of Canada accepting as a Governor General any appointment of a British government which was under Nazi domination?" This time the reply has had to be entirely deleted by the censor but its gist was "not a chance." He said that if necessary a Canadian could be appointed to fill that post till better times. He felt that no matter which side won the war, its end would witness the migration of a very large number of Britishers, probably several millions, to Canada.

Come what might this gentleman refused to admit the possibility of a complete severance of the ties between Canada and Britain. His attitude I believe to be typical of the great body of Canadian opinion. Those ties of loyalty —affection is probably a better word— are not something which can be severed by any known device. If the extremely loose political tie which now exists between Canada and Great Britain should be temporarily dissolved under duress, this bond of affection and sentiment which is infinitely stronger and more significant than any political tie would doubtless remain.

In a still more recent talk with the retired head of one of the provincial universities of Canada, a different

phase of the subject was uncovered. I put to him this question: "What do you think would happen to the British fleet if Britain were forced to capitulate? Would it come to Canada and help to continue the war from there as may recently have been intimated by Mr. Churchill?"

Such a suggestion, he said, was not practical. Detached from its bases and arsenals in Great Britain the fleet would no longer be an effective fighting force. Certainly Canada would be in no position to support and supply it or effectively use it. Even the United States could probably not supply the particular types of ammunition required for its guns. The only reason for the fleet to come over to this side would be to prevent its falling into the hands of the Nazis.

"Remember, however," he said, "that those ships have been supported and manned by the people of England and Scotland, not of Canada or Australia. The families of their officers and crews live in England and Scotland. If the people of Britain were to be held to ransom under threat of dire penalties for the surrender of those ships, the men who man them would have to recognize that their primary responsibility is to their own people, and turn the fleet or what was left of it over to the Nazis—unscuttled."

"What then of the future defense of Canada?"

"That," he went on, "would be largely up to the United States. Canada is in no position to stand off a strong power unaided."

FROM this reply, of course, it should not be inferred for an instant that Canada would rest on her oars in any scheme of Pan-American defense. It is not a matter of historical record that she has ever shrunk from her duty in such matters. While it is almost a sure thing that Americans and Canadians would fight side by side to repel an invader from the St. Lawrence valley or Nova Scotia, it is just as likely that the United States would have the active coöperation of Canada if necessary to defend New England or Washington state. Canada would coöperate with the United States to the fullest, but as a free nation maintaining her own identity. A nation which has been 170 years in the making does not lightly abandon that identity.

Surely there are no two other democratic nations anywhere which have such a clear-cut choice of hanging together from the standpoint of national defense or hanging separately. Whatever may have been the situation in times gone by, the development of air power has made it impossible for either nation to plan a defense of itself which does not involve defense of the other. This fact was recognized by the President of the United States when he pledged that this country would not stand idly by if Canada were subjected to attack by any aggressor power.

WHATEVER degree of altruism this pledge may have contained has in recent weeks been pushed into the background by weightier considerations. In the type of world which may be in the process of taking shape, the defense of all of South America against aggression from abroad may prove beyond the power of this country to accomplish. Whether this will be true or not depends largely on what power or group of powers controls the South

Atlantic at the close of this war. However, we may be sure that in whatever field the United States may be forced to limit her commitments under the Monroe Doctrine it cannot be in the region beyond her 3,000-mile undefended and largely indefensible northern boundary. To allow an aggressor power to become established along this boundary within short bombing range of our largest centers of population and industry would appear to be a long step in the direction of national suicide.

The foregoing discussion may seem rather out of place in an article on the public utilities of Canada and it no doubt would be so in normal peaceful times. However, such does not seem to be the case at present when economic and financial matters are tightly bound up with considerations of elemental physical security. Moreover, judging from the way Canadian securities, including utility bonds, have recently been behaving in the American market, there must be a good many people in this country who have grave misgivings as to the security of Canada.

AMERICANS can claim a genuine interest in the public utilities of Canada for two main reasons. In the first place as the mainspring of Canadian industry they would play a very important part in any North American defense partnership. Secondly, they are a favorite channel for the investment of American capital in Canada. In fact several of Canada's largest electric systems were largely developed by capital from "south of the line" and her dominant telephone system is very intimately connected both financially and otherwise with AT&T.

There is nothing at all diminutive about the public utilities of Canada. In proportion to her population Canada has the largest development in central stations of any country in the world except Norway. On this basis her central station development is 78 per cent greater than that of the United States and her power output in these stations is proportionately about two and three quarter times as great. Lacking coal in her central manufacturing regions, Canada's electric development is 96 per cent hydro and some 98 per cent of her electricity is normally produced by falling water. Her total hydroelectric generating capacity of some 8,300,000 horsepower represents only 19 per cent of her known surveyed hydroelectric resources, in addition to which there is a huge unexplored potential reserve.

IN a period of national emergency when fuel, transportation, and labor are at a premium, hydroelectric energy has a marked advantage over steam-generated power. Moreover the hydro-

¶ "THERE *is nothing at all diminutive about the public utilities of Canada. In proportion to her population Canada has the largest development in central stations of any country in the world except Norway. On this basis her central station development is 78 per cent greater than that of the United States and her power output in these stations is proportionately about two and three quarter times as great.*"

electric developments of Canada are very largely on streams which enjoy a steady flow or are backed by large water storage capacity. These developments are heavily concentrated in the St. Lawrence watershed. In recent years, roughly a quarter of Canada's electrical output has been used in electric boilers, chiefly in paper mills. This power, amounting to around seven billion kilowatt hours annually in recent years, is a kind of reserve to be drawn on when more urgent or economic uses for the power present themselves.

In spite of the fact that the average domestic electric consumption in Canada is 69 per cent higher than in the United States, only 7 per cent of Canada's output is consumed in her homes as compared with 17 per cent in this country. This is just an indirect way of indicating the tremendously vital rôle hydroelectric power plays in Canadian industry, particularly certain divisions of that industry which may be closely geared to a program of armaments. Consider some of the strategic metals. In the production of aluminum for instance a large volume of cheap electricity is a necessary ingredient, since it requires approximately 10 kilowatt hours of electricity to extract one pound of the metal. In a single aluminum reduction plant in the Saguenay river region of Quebec, 280,000 electrical horsepower are continuously employed in this process. Canada today produces about half as much aluminum as the United States and is surpassed in the world only by this country and Germany.

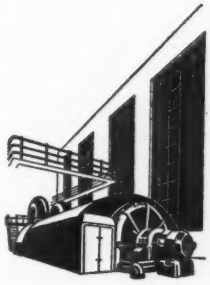
In central Quebec a large-scale chemical industry has been built up whose backbone is energy captured from the dark flowing waters of the St. Maurice, a stream which has already been developed to the extent of 1,018,000 horsepower and has a potential development of twice that much. Out in British Columbia the power of falling water makes possible the mining and refining of the two strategic metals, lead and zinc, in the output of which Canada stands fourth in the world, with an output a little less than half that of the United States, the world leader. Canada now ranks third in the production of copper with an output about one-third that of the United States. Electric power from both privately and publicly owned plants makes possible the mining and refining of the red metal.

Of great strategic benefit to Pan-American defense is the fact that about 88 per cent of the world's nickel supply is extracted from the crater of an old volcano in Ontario, a short distance north of Georgian bay. This metal on which Canada holds a virtual world monopoly is an important factor in any armament program. It is used in a wide variety of items including armor plate, gun barrels, and turbine blades. The great mines of International Nickel and Falconbridge are permitted to operate by the power of water harnessed in its tumble down the Hudson bay watershed.

Of some $3,932,000,000 of American capital invested in Canada, $553,000,000 has been invested in the securities of privately operated utility systems. Other millions have been put into bonds guaranteed by provincial and municipal authorities, the proceeds from which have been used to finance publicly owned utility systems. All told,

American Investment in Canadian Utilities

"A sizeable proportion of the total American investment in Canadian utilities has been placed through the medium of a limited number of bond issues of some of the more important Canadian utilities which are payable in United States dollars. With the opening up of the war in Europe on a furious scale, the prices of these bonds in the American market began a plunge which was only surpassed by that of the obligations of the invaded countries of Europe."



it would be conservative to estimate that at the present time at least one quarter of the total investment in Canadian utilities is financed by American capital. This particular classification of American foreign investments has fared most unusually well. In fact it has been practically free from capital losses and has paid a handsome return besides.

A sizeable proportion of the total American investment in Canadian utilities has been placed through the medium of a limited number of bond issues of some of the more important Canadian utilities which are payable in United States dollars. With the opening up of the war in Europe on a furious scale, the prices of these bonds in the American market began a plunge which was only surpassed by that of the obligations of the invaded countries of Europe. This latest decline was much greater than that suffered by these bonds during the entire previous course of the war. Certain high coupon issues which prior to the outbreak of war were selling at over their call prices, and were on the point of being refunded on a much lower interest basis, have since that time lost over a third of their value in the American market. The table outlined on page 92 tells the story.

In view of the great comparative stability of American utility bond prices in the face of the blitzkrieg it is both interesting and useful to speculate on the market reasoning behind the spectacular slump in the Canadian names. For reasons stated earlier in this article it can hardly logically be based on fear for the physical security of the underlying properties. In this respect the utilities of Canada and the United States are very much in the same boat. If the fear of armed invasion has forced down the bonds of a Canadian utility hundreds of miles from salt water to a level where they yield 10 per cent to the purchaser, then the prices of certain American Atlantic seaboard high grades to yield less than 3 per cent appear a bit toppy.

Perhaps what the market has in mind is the chance that United States dollar exchange may not continue to be available to Canadian utilities to pay their obligations "south of the line." Such a fear would explain the otherwise

		Amount (Millions $)	*Price Range* 7-29-39	5-9-40	6-7-40
Bell Telephone of Canada	5 —1957	30	125	110½	89½
Canada Northern Power	5 —1953	15	104	86½	65
Gatineau Power Series A	3¾—1969	52	98	79½	57½
Saguenay Power Series B	4¼—1966	25	106	90	69
Shawinigan Water & Pr.	4½—1967, 70	53	104	88	64½

strange phenomenon of Saguenay Power 4¼s of 1966 payable in Canadian currency continuing to sell well above par in Canada while the equally secured bonds of the same company, payable in United States dollars, were changing hands below 70 in New York.

PRIOR to the outbreak of war no such fear seemed to exist. The American investment in Canada, less that of Canada in the United States, gives this country a net stake in the Dominion of approximately $2,800,000,000. On this net stake has been paid a net return during the past decade varying from $170,000,000 to $200,000,000 annually. Of this amount less than $90,000,000 is in the form of interest payable in U. S. dollars on Canadian bonds owned in this country. It is reasonable to expect that in any kind of a squeeze this interest, which represents a contractual obligation, would take precedence over other forms of investment return which normally flow southward. In any case this interest burden is not large compared with the $184,000,000 worth of gold shipped out of Canada in 1939, or the amount, ranging from $200,000,000 to $300,000,000 annually, left behind by American tourists in recent years. It is less than Canada's annual newsprint sales to the United States.

Most convincing tangible evidence of strength on the part of a debtor is the ability to retire debt at a rather rapid rate, in addition to paying a generous rate of return to the holder of that debt. Canada has been able to accomplish this because of her extremely favorable balance of payments with the rest of the world. This positive balance has averaged $218,000,000 annually during the last five calendar years after paying the abovementioned favorable return on foreign capital invested there. Canada has been using this large favorable balance to retire her indebtedness abroad. In her relationship with the United States alone during the five years ending with 1938, she managed to bring about a net retirement of securities held in this country totaling $429,000,000. These included a large volume of Canadian utility bonds which have been repatriated through refunding issues floated in Canada on a Canada - pay - only basis. Gone from the American scene are all of the bonds of Canada's largest private utility, Montreal Light, Heat & Power. Practically all of the other large Canadian utility enterprises have made substantial progress in freeing themselves from sometimes burdensome U. S. pay obligations. American investors miss the former fat and juicy coupons thereon.

A possible future fly in Canada's ointment lies in the fact that, while she makes an excellent showing with the world as a whole, with Uncle Sam as an individual she has a tendency to slip behind a little. In the past she has been able to square accounts by converting her large favorable balances, chiefly in pounds sterling, into U. S. dollars. Who knows whether in the type of world which we may now be entering this convenient 3-party clearing process may still be possible? Possibly not if it turns out to be a hard-boiled totalitarian world in which foreign trade will be largely reduced to barter on a 2-party basis.

Even in such a world Canada should be able to square accounts with Uncle Sam as long as he will consent to buy her gold at $35 per ounce. If he should decline to do this a rather important adjustment in the economic relations between the two countries would be necessary to strike a balance on a bilateral basis. Either American tourists would have to spend more freely north of the line, the United States would have to absorb more Canadian products, or Canadians would have to obtain elsewhere some of the intriguing gadgets, ranging from Diesel engines to wrist watches, that they have been accustomed to import from this country. It is altogether likely that the latter course would be adopted before American investors would be asked to forego even temporarily the promised return on their capital invested in Canada.

Taking a forward-looking view of the entire situation, is it too much to expect that the present state of the world will make for even closer economic ties between the two countries? It should become increasingly clear to the people of this country that it is unreasonable to expect the closest coöperation in matters of defense from the other nations of this hemisphere while pursuing toward them a tariff policy which gives little consideration to their interests. A tightening of economic ties between Canada and the United States should tend to strengthen Canadian utility and other obligations held in the United States.

Consider now some of the more immediate effects of the present conflict. Paradoxically as it may seem, the enormous quickening in the pace of the war may be far from an unmitigated evil as far as investors in Canadian securities are concerned. Consider the probable alternative of the present course of events.

A long war of attrition from which the United States remained aloof would likely have severely damaged Canada's position both with respect to her internal credit and her balance of pay-

¶ "In *a period of national emergency when fuel, transportation, and labor are at a premium, hydroelectric energy has a marked advantage over steam-generated power. Moreover, the hydroelectric developments of Canada are very largely on streams which enjoy a steady flow or are backed by large water storage capacity. These developments are heavily concentrated in the St. Lawrence watershed.*"

ments with the United States. A deteriorating government credit coupled with steadily mounting taxation would inevitably have brought about a decline in the real value of Canadian securities of all kinds including utility securities. As events are now progressing the war is likely to be over before Canada's position can be very seriously hurt.

CONSIDER also that Canada's war effort, which is largely economic, is likely to be paralleled in its effects by the inevitable rearmament program in the United States. The tremendous burden of hemispheric defense will be inflicted much more directly on the United States, which has the industrial set-up to carry the burden and which has made the widespread commitments, than upon Canada, which will be content with the position of a junior partner. Therefore, if Canadian utility securities are due for an undermining through rising government debt and taxes, they are not likely to suffer a lonely fate.

A point of strength at a time like this in the economic set-up of most large Canadian hydroelectric utilities is their relative immunity from the pressure of rising costs. I once entered a 238,000-kilowatt generating plant up in the Laurentian highlands of Quebec and wandered pretty much throughout the entire station without meeting a soul. Finally, I came across a lone operator sitting in an out-of-the-way corner eating his lunch. In the case of such utility enterprises labor costs are not an important item and there is no chance for rising fuel costs to come between the investor and his dividend dollar. Such hydroelectric wholesalers as Gatineau and Saguenay do not normally spend over 15 per cent of their gross revenue on operating expenses including maintenance. Your typical well-managed steam electric utility normally consumes between 40 and 50 per cent of its gross on these items. An artificial gas company spends considerably more.

IS the decline in the value of the Canadian dollar likely to prove a serious burden to utilities which collect their revenues in Canadian dollars but have to make interest payments in high-priced American dollars? The most concrete way to answer this question is to refer to the period from 1931 to 1933. At that time too the Canadian dollar was heavily discounted and the volume of interest payable by Canadian utilities in U. S. dollars was very much above its present level. Those were years of depression, while the present period is one of high activity in Canada. A study of the earnings records of a group of the larger companies reveals that the burden of exchange would not become critical so far as interest payments are concerned unless the Canadian dollar should decline to less than 50 cents in U. S. money—assuming all the while, of course, that U. S. dollars could be purchased by the utilities at all.

Would a totalitarian triumph reduce Canada's internal prosperity by crippling her very important foreign trade? Some 30 per cent by value of Canada's production is normally shipped abroad as compared with less than 10 per cent for the United States. Canada's two large customers are the United States and Great Britain, each of which has been absorbing about 40 per cent of her total exports. Such fundamentals of Canadian production as farm prod-

ucts and metals normally make up the bulk of Canadian exports to Britain. It is entirely possible that after the war Britain's ability to pay for Canadian products will be greatly diminished unless she can raise her exports to Canada far above present levels. Against possibilities of this sort the investor in Canadian utilities may set the likelihood of a large post-war influx of industrious people into Canada who will be looking for a place to lead their lives under conditions of decency. Also in the long run the first-grade products of Canada certainly will not permanently go abegging for a market in a hungry world.

IN this article an attempt has been made to analyze some of the doubts and fears which in these troublous times may be worrying American investors in Canadian utilities. Some of these fears appear groundless; others appear exaggerated. By and large it seems that the elements of war risk affecting utility investors cannot be confined to a single side of the boundary line between Canada and the United States. The whole subject is one where hair-splitting analysis is a little out of place. Rather we would prefer to rely on a fundamental conviction which is quite deep down. It is simply that when huge edifices on this North American continent built of concrete and stone and steel, which are able to extract universally used kilowatt hours from falling water and sell them profitably for one-third of a cent each, cease to have value as backing for securities, then any present prediction as to the economic shape of things to come is likely to lose its validity.

That is a bit of a mouthful but you get the idea.

Priceless Heritage of Free Local Government

"I DO *verily believe that the preservation of our dual form of government, as we have known it, with a free people governing themselves locally, rests in the hands of Congress. Only Congress can take away the rights of local government, which the people now have and exercise. If those rights shall be taken away, even through inadvertence and failure to realize the results of legislation, they never will be restored; and the government which our Fathers founded, and under which we have lived, will be gone forever.*"

—JOHN E. BENTON,
General Solicitor, National Association of Railroad and Utilities Commissioners.

Wire and Wireless Communication

At a recent press conference, Chairman Fly of the Federal Communications Commission indicated that President Roosevelt in the very near future would name a defense communications committee to coördinate with private communications industries, including telephone, telegraph, and radio facilities, in carrying out defense policies. At the same time the FCC was expected to go ahead with a study of the communications facilities of the nation from the viewpoint of national defense.

Along other lines, the FCC has obtained additional funds to hire field radio inspectors to man mobile monitor units to police the air waves against unauthorized and possibly subversive radio communications. The FCC continued to check on possible "fifth column" activities in the communications field by informal conference with telephone and telegraph companies, with the view to extending the check-up of citizenship status (already ordered in the case of radio operators) to the operating personnel of the land wire systems.

The new committee was expected to be an all-government board composed of State, War and Navy officials, and a representative of the FCC—possibly Chairman Fly himself. The Treasury Department through the Coast Guard and possibly the Post Office Department might also participate. Under this set-up the private industry would coöperate through advisory subcommittees. Appointments were expected to be made by the President directly, instead of through the National Defense Commission (headed by Edward Stettinius) as was done in the recent creation of national defense committees in the field of electric and gas facilities.

The formation of a committee of general department heads of the Southwestern Bell Telephone Company to guard against "interruption of service or invasion of privacy in telephone communication" was announced recently by A. C. Stannard, president of the company, who said the step was taken in coöperation with the national defense program. Admittance to the company's buildings was also to be restricted.

General Plant Manager J. L. Crump was named chairman and coördinator under the general supervision of W. L. Holley, first vice president, Stannard said in a letter to all employees of the company. The letter stated:

> As telephone men and women we realize perhaps more fully than others the vital importance to the nation of adequate, fast, continuous telephone service. And as speed in national preparedness increases, the necessity of maintaining telephone service unimpaired becomes more imperative.
>
> Some of the necessary measures which the committee will adopt may cause minor personal inconvenience to telephone people. But all of us will recognize that they are the things we as individuals want done to protect the communications system we operate.

* * * *

E. F. McNaughton, director of the utilities department of the Cali-

fornia Railroad Commission, last month said a survey in 15 large cities of the nation showed that telephone rates in San Francisco and Los Angeles are lower than in most of the other cities.

The San Francisco rate for both small and medium homes, McNaughton said, is the lowest of all the large cities. Only one city, Washington, D. C., is lower in the large homes class. For small homes, Los Angeles is lower than 8 cities, and higher only than San Francisco. In medium homes, Los Angeles is lower than all but San Francisco, and for large houses only San Francisco and Washington are lower than Los Angeles.

Business rates in San Francisco and Los Angeles are generally below those of other cities, he said.

Cities surveyed were New York, Chicago, Philadelphia, Boston, Detroit, Cleveland, St. Louis, Pittsburgh, Baltimore, Cincinnati, Milwaukee, Buffalo, Washington, Los Angeles, and San Francisco.

* * * *

A REVIEW of the determination that a learning period is necessary in order to prevent curtailment of opportunities for employment of telephone operators in the independent branch of the telephone industry was granted on June 15th by the Wage and Hour Division, U. S. Department of Labor (*Federal Register*, June 15, 1940).

The United States Independent Telephone Association petitioned for a review of the findings and determination made by Dr. Gustav Peck, assistant director of the hearings branch, Wage and Hour Division.

In granting review of these findings and determination, the Wage and Hour Division announced that it would receive briefs from interested parties either in support of, or in opposition to, the determination, provided that they were filed in triplicate with the administrator of the Wage and Hour Division before the close of business on July 1, 1940.

The administrator has authorized Henry T. Hunt, principal hearings examiner of the Wage and Hour Division, to review the action and to make final determination of the matter. Under the previous determination, exchanges with 500 or more stations in the independent branch of the telephone industry would be permitted to employ learners for a period of 320 hours (approximately eight weeks) at 25 cents an hour instead of the present minimum wage of 30 cents an hour under the Fair Labor Standards Act. Operators in exchanges with less than 500 stations were exempted from the provisions of the act by an amendment passed at the last session of Congress.

* * * *

OCCUPATION of Paris by German troops has placed under Nazi control two major factory groups owned by the International Telephone & Telegraph Corporation, it was disclosed in New York recently. Le Materiel Telephonique, which manufactures rotary automatic telephone equipment, and Compagnie Generale de Constructions Telephoniques, which operates another factory and occupies a laboratory and office building, have been taken over by the Germans.

When Nazis occupied Antwerp the IT&T's most important export plant on the continent was taken over by the Reich. Previously smaller IT&T plants in Copenhagen, Oslo, and The Hague came under German control.

In England, one IT&T subsidiary, Standard Telephones & Cables, Ltd., operates three communications equipment factories in London and Croydon; Creed & Co., another affiliate, manufactures teletypewriters.

* * * *

CONGRESS' intent would be nullified and Supreme Court declaration concerning the desirable effects of competition would be meaningless if the Federal Communications Commission were required to deny a radio station entry into the field merely because it would have an adverse effect on an existing station, declared the FCC in deny-

ing petition for a rehearing filed by WLEU Broadcasting Company, Erie, Pa., on the commission's grant of a construction permit to the Presque Isle Broadcasting Company for a new station at that place. To quote from the commission's decision:

> It is a direct contradiction of the proposition that free competition is the basic principle of the American system of broadcasting to contend that the commission is under a duty to consider the effect which competition may have upon the ability of an existing licensee to continue to serve the public. It is implicit in the idea of free competition that public interest cannot possibly be adversely affected by the failure of an existing station to survive due to increased competition, because this result cannot follow unless the new station's competitive efforts enable it to render a superior public service.
>
> The Supreme Court has made it perfectly clear that "Congress intended to leave competition in the field of broadcasting where it found it" and to permit "a licensee to survive or succumb according to his ability to make his programs attractive to the public." A licensee is not entitled to be protected from competition and the commission is under no duty to make findings on the effect of such competition on the licensee.

The commission noted a vital distinction between the situation where an applicant is not financially qualified and the case where the applicant is so qualified, but pointed out that the petitioner does not allege that this applicant is not financially qualified but bases its complaint on the possible effect of competitive effort. The statute does not require the commission to consider the latter factor but makes success or failure in the broadcasting business depend solely on a licensee's "ability to make his programs attractive to the public."

WLEU, the only broadcast station in Erie at the present time, operates on 1,420 kilocycles with 250 watts, unlimited time. It devotes approximately 40 per cent of its time to NBC Blue Network programs. The Presque Isle Broadcasting Company, which received a construction permit March 13th, proposes a local program service. There are 75 churches, 25 charitable organizations, 30 educational institutions, and more than 100 civic or social organizations in Erie. The Presque Isle Broadcasting Company proposes to operate on 1,500 kilocycles with 250 watts day and 100 watts night.

* * * *

IMMEDIATELY upon giving commercial status to frequency modulation (FM) radiocasting, the Federal Communications Commission issued regulations to govern stations set up under the method. Noteworthy were stipulations regarding minimum hours of operation, allocation of stations, and ownership requirements "to safeguard the public against monopoly."

Each station licensed must operate a minimum of six hours daily, except Sunday, three of them during daylight hours, three after dark. In addition, at least one hour of day and night programs must be devoted to periods not duplicated elsewhere in the same area. This arrangement precludes FM stations merely relaying program schedules from standard radiocast stations, and also gives the system an opportunity to display its full-fidelity virtues to best advantage.

Unlike standard stations, FM transmitters are to be licensed to serve specified areas measured in square miles. In localities where one or more FM stations are operating, the radius of service for each will be made as comparable as possible.

According to the FCC announcement, "no person or group may directly or indirectly control more than one FM station in the same area. Likewise, no person or group may control more than one station, except upon showing that such operation would foster competition or will provide a high-frequency broadcasting service distinct and separate from existing services, and that such operation would not concentrate control in a manner inconsistent with public interest, convenience, or necessity." The commission further declared that control of more than six stations by the same person or persons through incorporation would be inconsistent with the public interest.

It was expected that the end of summer would find numerous FM stations in operation throughout the country. More than 150 groups were said to be seeking permission to construct them.

* * * *

A NEW foreign remittance service, under which steamship ticket offices, tourists' bureaus, banks, and brokers authorized by it will act as foreign remittance agents for it, was announced recently by the Postal Telegraph-Cable Company. These agents will sell foreign money remittances and foreign exchange to the public in all parts of the United States.

Executive vice president of the company, Ellery W. Stone, said the service would be operated through a new agency division of the company's foreign remittance department. This division will supply the selected agents with daily competitive foreign exchange quotations and will arrange for the speedy execution of orders so received through Postal Telegraph facilities. Mr. Stone explained:

> The demand for foreign remittances has become so great that it has been decided to bring this service to the general public through the medium of every available reliable, active agency. Foreign remittances will be handled over our own or our connecting telegraph, radio, and cable routes or by mail or transatlantic clipper. A 24-hour daily service will be maintained.

* * * *

TELEPHONE users throughout the nine states of the Southern Bell Telephone & Telegraph system will save approximately $525,000 a year on their interstate calls beginning August 1st, according to an announcement by the Federal Communications Commission at Washington on June 29th.

Following conferences with representatives of the company and the commission the reductions were announced on interstate calls of from 43 miles to 750 miles. Tolls on calls of less than 43 miles will remain the same, and intrastate rates are not affected by the change.

Telephone officials at Atlanta, Ga., said that the new schedules would be put into effect to bring about conformity between Southern Bell interstate rates and rates of the American Telephone and Telegraph system already in effect. They also pointed out that there would be no change in rates on calls emanating from Atlanta over a distance of more than 480 miles. Calls of greater distance have already been on the "long line" or AT&T reduced rate.

Georgia's saving under the reduction will be about one-sixth of the total, it was pointed out.

Examples of the reductions in daytime rates for station-to-station calls: For 43 miles, 40 to 35 cents; 50 miles, 45 to 40 cents; 100 miles, 60 to 55 cents; 150 miles, 80 to 70 cents; 200 miles, $1.05 to 80 cents; 300 miles, $1.25 to $1.05; 500 miles, $1.90 to $1.50; 750 miles, $2.50 to $1.90.

For person-to-person calls the reductions include: For 43 miles, 55 to 50 cents; 50 miles, 65 to 55 cents; 100 miles, 90 to 75 cents; 150 miles, $1.15 to $1; 200 miles, $1.40 to $1.10; 300 miles, $1.65 to $1.40; 500 miles, $2.40 to $2; 750 miles, $3.25 to $2.55.

* * * *

SCENES of the Republican National Convention in Philadelphia were picked up by television in Tulsa, Okla., about 1,800 miles distant, establishing a new American long-distance record for television reception, the National Broadcasting Company reported on June 28th. At Lake Placid, 325 miles distant, another long-range pick-up was reported by the General Electric Company.

One of the images seen was that of Wendell L. Willkie as he appeared before the convention, marking the first time that a presidential nominee was televised. The expressions and gestures of the Republican nominee were said to be "clearly mirrored" and each utterance was described as "distinct" by observers at Radio City.

The telecasts seen in Tulsa and Lake Placid were tuned in from Station W2XBS, on the Empire State building, where the images were rebroadcast.

Financial News and Comment

By OWEN ELY

Willkie Nomination

LEADING financial services seem to agree on the importance of the Willkie nomination as heralding a return to better relations between politics and business. Thus Poor's service states:

> The burst of strength in the stock market . . ., following the nomination of Wendell L. Willkie, was nine-tenths psychological and one-tenth fundamental. However, there is significance in that one-tenth far beyond the bullish demonstration so far witnessed. The growing prospect of Willkie's election in November would not guarantee a roaring bull market. However, democracy and free enterprise would be given added life, and securities would at least be valued on a basis nearer their intrinsic worth. The market will not be able to shake off adverse foreign developments entirely, but a tremendous step has been taken in the right direction, and we believe that security prices will reflect it as summer progresses.

Capital Market Revives

NEW financing for the month of June was surprisingly large — about $98,000,000, according to the preliminary estimate of the *Commercial & Financial Chronicle*. About $4,000,000 was "new money" and $94,000,000 refunding. Except for $38,000,000 Jersey Central Power & Light bonds recently offered, the financing was private, including the $46,000,000 Carolina Power & Light issue, $7,000,000 for Pennsylvania Water & Power, and smaller amounts for Central Hudson Gas & Electric, New Haven Water, and West Coast Telephone.

After nearly two months of idleness due to war conditions, the investment banking business is showing signs of revival. The long-dormant issue of $38,000,000 Jersey Central Power & Light 3½s was finally offered, and its success led to the registration of $50,000,000 Cleveland Electric Illuminating 3s and two smaller offerings. Older issues in registration include $32,000,000 Indianapolis Power & Light first 3¼s of 1970 and $10,000,000 Iowa Southern Utilities first 4s of 1970. Stock issues on the registration calendar include 149,591 shares of Indianapolis Power & Light preferred, 180,000 shares of Narragansett Electric preferred, and 7,000 shares of Commonwealth Water Company first preferred stock.

Rochester Gas & Electric's $15,000,000 issue of general mortgage 3⅜ due 1970 will be sold privately, instead of through a First Boston-Smith Barney syndicate.

Six Per Cent on Prudent Investment

THE FPC recently ordered Safe Harbor Water Power Corporation to revise its rate schedule to the parent companies (Consolidated Gas of Baltimore and Pennsylvania Water & Power) from a 7 per cent to a 6 per cent rate of return on investment. (See July 4th issue, p. 58.) The company was also criticized for failing to refund its 4½ per cent bonds.

The commission employed as a "rate base," original cost less depreciation, plus working capital. The commission stated:

> The "fair value" rule for rate making, with its speculative element of reproduction cost, has been demonstrated by experience

to be delusive. Net investment, or prudent investment, is based upon established facts and is not subject to the vagaries of theories, imagination, and abrupt fluctuations of prices and conditions. It eliminates unwarranted demands upon consumers through the projections of future rates upon ephemeral values and gives stability to rates, which minimizes the economic shocks from sharp fluctuations in prices. . . .

We have reviewed the seven cases in 1939 in which courts and commissions prescribed 6 per cent as a reasonable rate of return for electric, gas, telephone, and bridge utilities. The Illinois Supreme Court held in 1939 that a rate of return slightly more than 5 per cent was not confiscatory, but the court emphasized the difference between a reasonable rate of return and a nonconfiscatory one, and the rate base was fair value there as distinguished from the net investment base used in this case. . . .

This was the first rate case involving a hydroelectric project licensed by the FPC, and serves to accentuate recent trends toward "prudent investment" and a 6 per cent return as standard policy for Federal and state agencies. It would be interesting to analyze leading utility companies to see how closely they conform to this standard, but it is difficult to compile the necessary data. The property account as stated in reports to stockholders does not necessarily conform to the "rate base" as set up under present accounting standards by the FPC, state commissions, etc. However, the accompanying figures from the 1939 "Financial Statistics" issued by the SEC may be of interest. (The percentages shown in the table are derived from system totals of operating company data, and do not reflect consolidated system returns.) The average ratio of gross income to capital and surplus for all registered holding companies in 1939 was 5.81 per cent, and since capital and surplus had an average ratio to property and investments of 94 per cent, the ratio to the latter was about 6.2 per cent. While this ratio includes outside investments and apparently does not make allowance for the depreciation reserve (which amounts to about 11 per cent of property), the result indicates in a broad way the 1939 level of earnings in relation to investment.

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SEC May Favor Cut in 20-day Waiting Period

EVIDENTLY the prolonged "drought" in public financing of utility issues has aroused the SEC to the need for

❧

Name of Holding Company System	*Ratio of Gross Income to Capital and Surplus*	*Ratio of Funded Debt to Net Property*	*Ratio Capital & Surplus to Property & Investments*
American Gas & Electric Co.	6.26%	52.34%	91.88%
American Power & Light Co.	5.12	51.74	94.87
American Water Works & Elec. Co.	6.61	57.19	92.98
Associated Gas & Elec. Co.	5.52	54.46	93.98
Cities Service Power & Light	6.81	63.02	98.21
Commonwealth & Southern Corp.	5.22	53.66	99.04
Community Power & Light Co.	7.92	72.46	85.36
Electric Power & Light Corp.	4.65	42.19	93.45
Engineers Public Service Co.	5.85	54.66	96.07
The Middle West Corp.	5.86	60.89	98.84
National Power & Light Co.	6.53	61.41	95.66
Niagara Hudson Power Corp.	5.16	51.94	94.72
The North American Co.	6.10	61.04	88.42
Standard Gas & Electric Co.	6.08	58.62	96.16
The United Gas Improvement Co.	7.65	48.13	92.38
The United Light & Power Co.	6.33	57.09	89.94
Utilities Power & Light Corp.	4.21	60.61	96.18
Average of above systems*	5.81%	54.17%	94.01%

*Includes a number of smaller systems.

remedying, as a defense measure, defects in the Securities Act of 1933 which bankers have long been protesting. The commission is apparently making a virtue of necessity, however, for it did not take action until bills had actually been introduced in Congress and dates for committee hearings had been set. These bills contained IBA suggestions.

The principal change now reported agreeable to the SEC is modification of the 20-day waiting period. The commission sometime ago, in permitting the price and coupon rates of an issue to be fixed by amendment shortly before the offering date, took much of the sting out of this provision of the act. Nevertheless, war conditions make it necessary to gear finance proposals as closely as possible to current conditions, and the waiting period remains a handicap. As an illustration, it took nearly a year on the SEC registration calendar to clear up the Jersey Central Power & Light issue, caught in last September's war mêlée. To expedite the 20-day reform, it has been suggested that a rider be attached to some pending legislation, such as the Wagner-Cole bill for investment trust regulation, which would permit the SEC to waive the waiting period for companies with a proven record of published information.

The other changes suggested by the IBA will probably have to go over until January, as the SEC has requested more time to study them. These proposals include the following amendments: (1) Allow solicitations of sales, but not actual sales, during the waiting period (where it is retained); (2) require that purchasers of securities, when suing under the act, be obliged to show that a misstatement or omission in the prospectus caused any loss they sustained; (3) damages awarded in suits based on misstatements and omission should be limited to losses actually proved, and rescission of the *full* purchase price should be eliminated; (4) revise the requirement that a prospectus must be furnished with every purchase made during a full year after the initial registration.

The IBA also suggested some changes in the Securities and Exchange Act of 1934 with respect to the sections restricting purchases by executives of stock in their own company. This provision has caused almost complete withdrawal of support for many stocks at times of extremely weak markets, by executives of the company, though such support is both logical and desirable.

News Digest

THE recent war development, Russia's invasion of Rumania, again affects International Telephone & Telegraph. As of December 31st, the property of Rumanian Telephone Company was carried at $25,941,882; gross earnings last year amounted to $4,656,865; and net was $1,781,369.

Considerable delay seems likely in liquidating B-MT common stock due to tax problems and other factors. Before even a partial liquidating dividend can be declared, stockholders must vote on reduction of the capital.

Stone & Webster, leading utility engineering construction firm, now has about $40,000,000 unfinished work on hand and is negotiating for $15,000,000 more—a substantial increase over last year.

Brooklyn Union Gas Company's first half net is expected to be below last year, owing to higher costs and depreciation charges.

Standard Gas and Electric, in a belated report for the twelve months ended March 31st, showed consolidated net income of $4,410,199 compared with $1,445,296 for the same period last year; in the first quarter net was $2,405,773 against $1,312,986.

The Community Power & Light reorganization plan, approved sometime ago by the SEC, has now been sanctioned by the Federal court. Holders of preferred stock will receive 95 per cent of the new common, and the old equity stockholders the remaining 5 per cent.

Hudson & Manhattan has lost its fight to increase the fare from Jersey to downtown New York from 8 cents to 10 cents.

FINANCIAL NEWS AND COMMENT

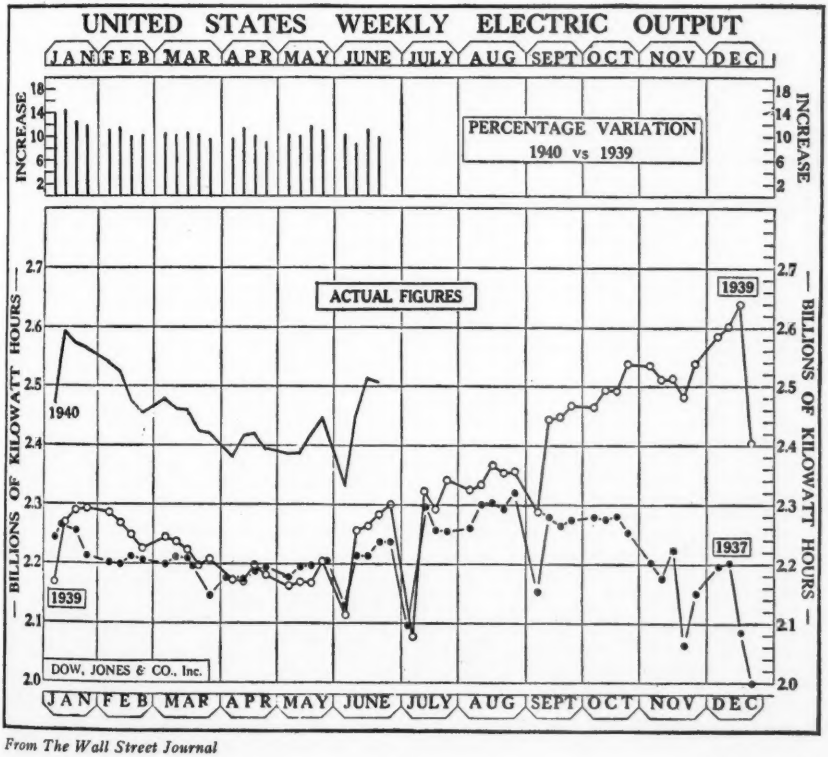
New developments in the Associated Gas Case include an attempt by the General Protective Committee to reopen the 1933 recapitalization plan, but it seems unlikely that the court will accede to this request until the trustees have had more time to study the relations between the two top holding companies. The trustees have reopened the recent tax settlement with the United States government (obtained by corporation officials before the bankruptcy).

The REA is planning to spend an additional $100,000,000 for farm electrification in the fiscal year which began July 1st.

While average United States gains in electric output for the week ended June 22nd continued around the 10 per cent level (compared with last year), there was the usual wide variation in reports for individual systems. Boston Edison and Consolidated Edison showed slight declines from last year, while National Power & Light, Detroit Edison, and American Water Works gained about 16 per cent and Niagara Hudson over 19 per cent.

Electric Power & Light, in its report for the twelve months ended April 30th, showed a gain of about 37 per cent in net income over a year ago, and about 89 per cent for the three months ended April. Most of the gain reflected improvement in United Gas earnings.

The average interest rate paid by 188 subsidiaries of registered holding com-



From The Wall Street Journal

panies in 1939 was 4.23 per cent, compared with 4.40 for 177 companies in the previous year. Only one of the companies listed in the survey failed to earn its interest, and average coverage was 2.67 times.

THE SEC, in passing on the application of United Light & Power Company to make advances to subsidiaries through the purchase of unsecured interest-bearing notes, indicated its apparent intention to keep interest rates on such loans at a relatively low level (around 3-4 per cent) or to put them on a "capital contribution" basis, in return for capital stock.

Revenues of natural gas companies in April averaged 4.6 per cent over last year and those of manufactured gas companies 2.3 per cent.

The National Defense Advisory Commission has agreed with TVA to ask Congress for $65,000,000 for two new plants (one hydro and one steam). Of this amount, $25,000,000 is sought to be authorized in a pending appropriation measure. However, House and Senate committees have indicated a disposition to study this request before recommendation. (See p. 114.)

FPC Emergency Powers

As a matter of interest at this time, here follow excerpts from Title II, § 213 of the Utility Act:

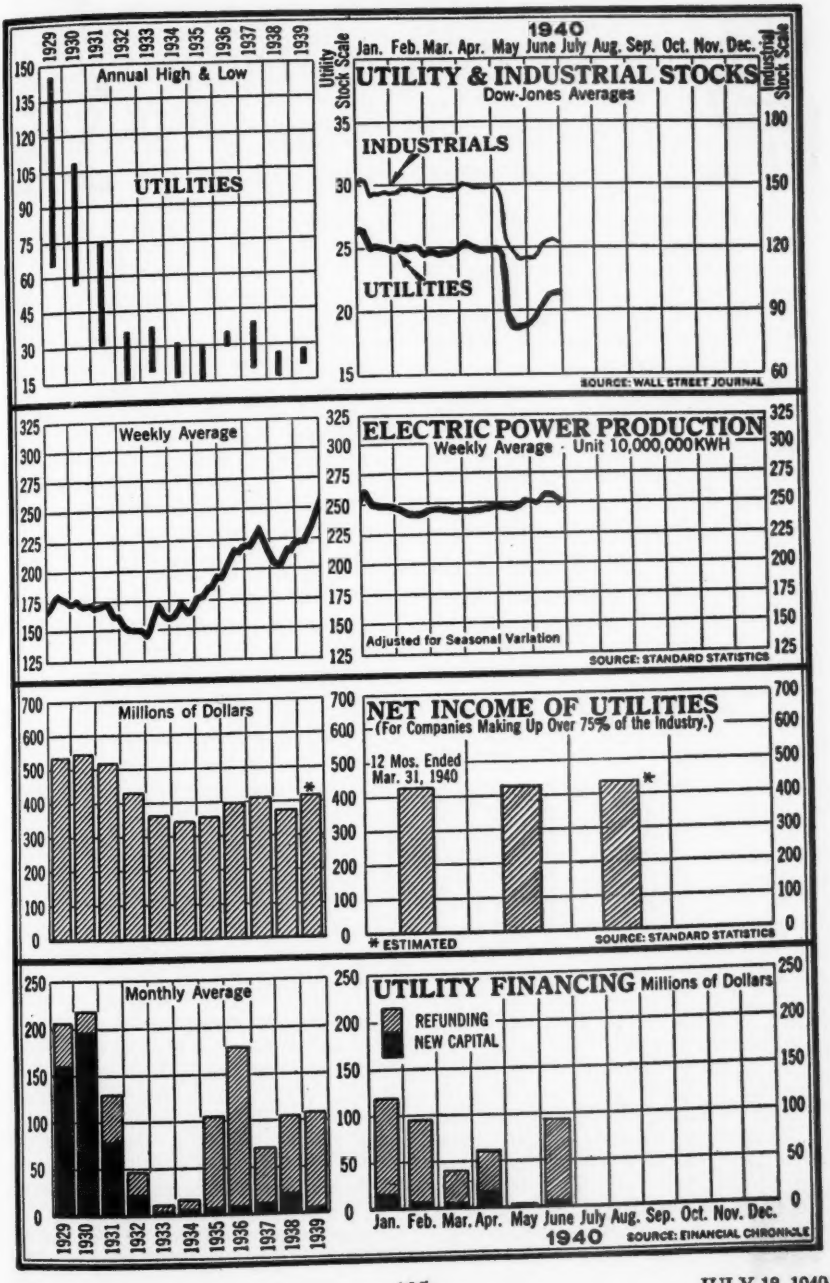
> For the purpose of assuring an abundant supply of electric energy throughout the United States . . . the Federal Power Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coördination of facilities for the generation, transmission, and sale of electric energy. . . . Whenever the commission determines that an emergency exists . . . the commission shall have authority . . . with or without notice hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party. During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the commission may make such temporary connections with any public utility subject to the jurisdiction of the commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the commission by reason of such temporary connection or temporary construction: *Provided,* That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further,* That upon approval of the commission permanent connections for emergency use only may be made hereunder.

Utility Loan Hit

THE Securities and Exchange Commission recently permitted, by a 3-to-1 vote, the Ogden Corporation, successor in reorganization to the Utilities Power & Light Corporation, to borrow $4,400,000 at 2½ per cent from the Manufacturers Trust Company of New York for use in the redemption of preferred stock.

Commissioner Edward C. Eicher dissented, stating that the effect of the proposed transaction, which "no ingenuity can square with the standards of the act," would be to "have Ogden Corporation borrow $4,400,000 of which $2,872,750 will flow to Atlas Corporation in redemption of the preferred stock owned by it." "Certainly," he added, "Atlas has no contract right to such accelerated redemption of its preferred stock, nor does it enjoy any such right in its status as the apparent controlling common stockholder."

Commissioner Robert E. Healy concurred in the results reached by the majority of his colleagues, but reserved the right to file a separate opinion.


Annual High & Low
UTILITIES
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939
150 135 120 105 90 75 60 45 30 15
1940
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
Utility Stock Scale
Industrial Stock Scale
INDUSTRIALS
UTILITIES
35 30 25 20 15
180 150 120 90 60
SOURCE: WALL STREET JOURNAL
Weekly Average
325 300 275 250 225 200 175 150 125
ELECTRIC POWER PRODUCTION
Weekly Average · Unit 10,000,000 KWH
Adjusted for Seasonal Variation
SOURCE: STANDARD STATISTICS
Millions of Dollars
700 600 500 400 300 200 100 0
NET INCOME OF UTILITIES
(For Companies Making Up Over 75% of the Industry.)
12 Mos. Ended Mar. 31, 1940
* ESTIMATED
SOURCE: STANDARD STATISTICS
Monthly Average
250 200 150 100 50 0
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939
UTILITY FINANCING Millions of Dollars
REFUNDING
NEW CAPITAL
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1940
SOURCE: FINANCIAL CHRONICLE

What Others Think

Capital Still Needed for Industrial Expansion

THE chronic stagnation of the capital or investment markets has been the most striking economic phenomenon of recent years. The persistent depression of the so-called capital goods industries is in marked contrast to former periods of recovery, when new capital developments resulted in a great expansion of production and higher standards of living.

There is undisputed agreement that the prevailing low level of economic activity and the unprecedented volume of unemployment are largely explained by this situation. The widest difference of opinion prevails, however, with respect to the causes of the phenomenon of idle money, idle factories, and idle men.

The Brookings Institution on May 27th made public the report of a 2-year investigation of the factors responsible for the stagnation of the capital markets, which takes sharp issue with the concept that the United States has reached a stage of "economic maturity," necessitating extensive supplementing of private by public enterprise. The study, dealing with capital expansion in relation to employment and economic stability, found that the possibilities of further development of private enterprise are adequate to absorb the nation's capital and labor resources for many years to come. Reëstablishment of stable conditions largely depends on the removal of unnecessary impediments to the flow of funds into constructive capital developments and the restoration of confidence in the future of private enterprise.

The study was directed by Dr. Harold G. Moulton, president of the institution. Associated with him were Dr. George W. Edwards, of the College of the City of New York; Dr. James D. Magee, of New York University; and Dr. Cleona Lewis, of the institution's permanent staff.

IN appraising the argument that the country has reached "economic maturity," the report pointed out that production data showed no declining tendency prior to 1929, although the frontier had disappeared a generation earlier and the rate of population increase had been declining for half a century. The decline in production since 1929 proves merely that there has been a protracted depression.

The increase in population since 1929, the estimated further increase during the next forty years, and the requirements for raising living standards of the present population, were found to offer an ample basis for large-scale private capital construction. Annual additions of from four to five billions to productive plant and equipment, and of around six billions to housing facilities, are necessary over the next generations to provide a reasonably satisfactory standard of living. In addition, there would be large public requirements for highways, streets, sewers, and other utilities.

No support was found for the contention that large industrial corporations have reached a point where they can finance their potential capital requirements from "internal" sources. In most cases, only a moderate expansion in output could be financed without additional short-term borrowing, and large additions to plant would require extensive recourse to the long-term investment market.

THE view that corporations have been providing for capital expansion out of "depreciation reserves" is based upon a failure to distinguish between mere

replacement of old capital and construction of new capital. Additions to corporate surpluses in recent years—with which new plant and equipment might be constructed—have been negligible.

The study appraised in detail many of the ideas which have gained some popular currency as reasons for the stagnation of the capital markets. It found that this stagnation could not be ascribed to a lack of money savings or to policies of commercial banks. Although money savings are much smaller than in the late twenties, they are greatly in excess of current market demands. Commercial banks, far from pursuing restrictive credit policies, have made unusual efforts to expand credit; their failure to do so arises from the lack of demand from credit-worthy enterprises.

Many small corporations are underfinanced, but their primary need is working capital, raised by the sale of stock. Extension of short-term loans or intermediate credit to companies deficient in working capital does not meet their problem, the report points out.

GOVERNMENT policies and action have impeded the flow of capital into constructive developments in several ways. Taxation policies have tended to drive investors to high-grade securities; regulation has raised the costs and increased the risks of capital flotations; the persistence of huge deficit spending has undermined confidence in public credit; and the development of a maze of government lending agencies has narrowed such private investment channels as remain.

The existing taxation system, developed without thought of possible effects upon the capital market, encourages investment in high-grade bonds, particularly tax-exempt issues, and discourages investment in equity securities. Inasmuch as the primary need at the present time is for the expansion of capital enterprise through stock flotations, the effect of present tax laws is serious.

The protracted time involved in complying with Securities and Exchange Commission rules has increased market risks in the issuance of new securities, and the vagueness of the rulings and indefiniteness of penalties have been complicating factors. The costs of legal and other expenses in complying with the Securities Act have been high for small corporations, and, similarly, the act has worked against small local dealers. However, the report states, securities regulation has been a contributing, rather than a major, factor in restricting the flow of capital.

THE persistence of huge fiscal deficits and consequent growth of the public debt, together with the developing philosophy that a permanently unbalanced budget is essential to the maintenance of prosperity and employment, have unquestionably lessened the disposition of both enterprisers and investors to assume the risks inherent in long-term capital commitments. Uneasiness over the future of private investment is accentuated by the fear of an ultimate breakdown of public credit, accompanied by price and wage inflation.

The growing competition of government credit agencies with private institutions and individuals in diverse fields has been a factor militating against private lending. The tangled web of interagency credit transactions and operations, together with the maneuvering of the debt limit and the apparent disposition to transfer to a so-called "investment" budget the bulk of the outlays which cannot be covered from ordinary revenues, contributes to the prevailing confusion and uncertainty.

These factors, though indirect and largely psychological in character, constitute serious impediments to long-term investment. The system of private enterprise involves the making of commitments extending over a considerable period of time and such commitments will not be undertaken if the risks appear prohibitive.

The book is divided into two parts. In the second part there is a chapter (XII) on the regulation of special types of corporations. This in turn is subdivided into (a) state regulation of public utility

issues; (b) Federal control over public utility holding companies; (c) Federal regulation of railway issues. It is in this division that government policies and private capital expansion are analyzed in the light of their impact on capital markets.

The conclusions of the analysis as a whole are brought together in an interpretative final chapter.

CAPITAL EXPANSION, EMPLOYMENT, AND ECONOMIC STABILITY. By Harold G. Moulton, George W. Edwards, James D. Magee, Cleona Lewis. The Brookings Institution, 722 Jackson Place, Washington, D. C. Price $3.50. 413 pp. 1940.

Second Brookings Institution Volume on Government Economic Regulation

UTILITIES will find of special interest two important books sponsored by the Brookings Institution analyzing the relationship of the government of the United States to the economic life of this nation.

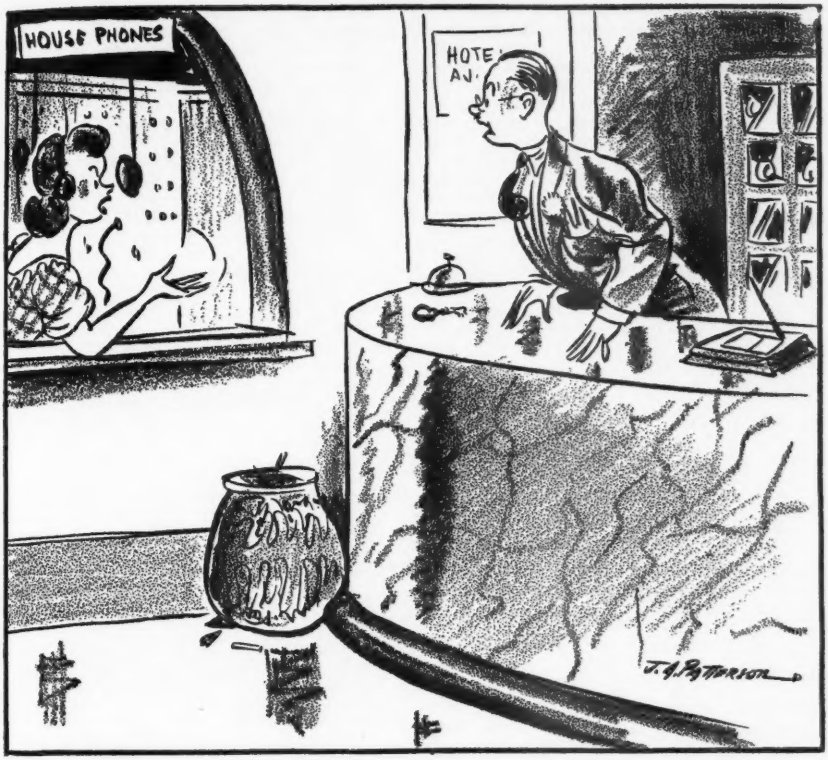
The first of these volumes, already released, dealt with governmental regulation of private enterprise as it has been applied *generally* to a wide range of industrial and commercial life, without important distinctions between one type of industry or another. The second volume, released in June, 1940, begins with a further analysis of government regulation of private enterprise which investigates particular areas of economic life which have been singled out for special governmental treatment—such as the field of public utility regulation.

The nature of the material to be dealt with in this second volume made it desirable to draw upon the expert knowledge of workers in that particular field. Hence, the opening chapter on "Foreign Commerce" (pages 521-615) was prepared by Dr. Frank A. Fetter, professor emeritus of political economy at Princeton University. The chapter on "Public Utilities" (pages 616-745) was prepared by Professor Ben W. Lewis; the chapter on "Transportation" (pages 746-863), by Charles L. Dearing; the chapter on "Agriculture" (pages 864-947), by Edwin G. Nourse, of the Brookings Institution staff. Miss Eleanor Poland did most of the work on the chapter on "Bituminous Coal" (pages 948-987).

There was also special collaboration on the other chapters, which treat respectively of governmental regulation in the fields of "Petroleum and Natural Gas," "Food and Drugs," "The National Recovery Administration," "War," "Governmentally Organized Production," "Public Relief," "Social Security." The volume as a whole is sponsored by Leverett S. Lyon and Victor Abramson, who were presumably largely responsible for the interesting chapter entitled "Concluding Observations."

THE chapter on public utilities reviews the history of utility regulation and the more recent development of government ownership in the power field. The summation is mildly critical of regulation to the general effect that there has been too much lost motion and undue controversy over valuation theories and legalistic concepts of constitutional rights of public utilities. There is a suggestion that regulation will work better, for the industry as well as for the consumers, when legalistic pound-of-flesh tactics are thrown overboard and utilities find themselves in the position of gaining more through the development of service by reduced rates than through the law courts.

Professor Lewis' review touches the high spots of a great portion of the better-class literature on public utility regulation. There is nothing particularly new in this recital, but it does have the effect of being a sort of thumb-nail sketch of the merits and demerits of commission regulation.



"THAT SAP IN 403 KEEPS ASKING IF WE HAVE AC OR DC CURRENT. I'VE TOLD HIM TWICE THAT NEITHER ONE IS REGISTERED HERE"

Professor Lewis does follow a rather disinterested, middle-of-the-road course through the various fields of controversy, even in the classic area of reproduction cost *versus* prudent investment. Here he pauses to remark about the irony of the situation by which the victory between the two rival theories has gone to a hybrid method ("fair value") which combines, without theory or purpose, the wholly irreconcilable features of both original cost and present cost. He states as a fact that reproduction cost has won "substantial, although waning, support from regulatory agencies, while original cost (actual prudent investment) has had all but unanimous backing in academic ranks and in late years has been gaining adherents in court and commission circles."

THE author does not seem enthusiastic over either theory, because both are "subject to certain economic infirmities irrespective of how the costs may be measured." He says that before "public utility rates based upon costs may be said to be 'proper,' functionally, there must be assumed an equilibrium of demand, prices, and costs, . . . in the actual and continued existence of which, in the case of any single public utility, there is not the slightest reason to believe."

Professor Lewis concludes:

> The conclusion, then, to which one is forced, is that reproduction cost and prudent

investment are both makeshift devices to assist in setting utility prices that are "fair" as between owners and users, and in bringing utility prices into some kind of rough, over-all harmony with the level and long-run trends of prices in general; and that neither has a preponderant advantage in the performance of these functions. This leaves the choice one of practicality in terms of ease, expense, and expediency. On these counts reproduction cost has a notoriously bad record. It is not too much to say that in terms of cost, delay, uncertainty, and the arousing of animosity and contention, the performance of the reproduction cost method falls little short of a public scandal; by far the greater part of the grotesque and costly ponderosity which characterizes modern rate regulation is to be attributed directly and solely to the reproduction cost approach. . . .

Conversely, on all points relating to expediency the prudent investment method promises an almost revolutionary improvement in the process by which over-all rate levels are established. The original installation of prudent investment records would occasion expense and controversy, but, once instituted, their maintenance and use would involve only a fraction of the cost and dispute which regularly attend the use of reproduction cost appraisals, and the time required for a rate determination could be stated more pertinently in terms of days rather than months.

Seemingly of greater importance, however, in the mind of the Brookings Institution collaborator than the hackneyed conflict between these rival valuation theories is the need for regulatory encouragement of a more aggressive and promotional rate policy. In this respect, Professor Lewis hails the advent of the TVA, enforcing rate reductions in the Tennessee valley, as a hopeful sign. True, he does not attempt any evaluation of the merits of public ownership *versus* private ownership, *per se* — indeed, he says it is quite impossible. He forecasts that actual decisions on this matter will continue in the future as they have in the past and be settled on piecemeal, sectional bases, in accordance with local influences and collaborating factors. But the author does commend the TVA for its aggressively promotional rate policy.

On the score of public utility regulation, generally, the author states:

The record of public utility regulation generally since 1907 is neither impressive, nor yet too disheartening. The excessive costs and delays of regulation, its rigidities, and its apparent lack of purpose beyond the settlement of individual controversies, cannot fairly be overlooked. On the other hand, the utilities industries have experienced an enormous physical growth, the increasingly complex problems of regulation have been met by the improvisation of elaborate regulatory machinery, and the period for adjustment has, after all, been short.

The developing processes of regulation hold promise to the extent that they effect an informed and positive adjustment of public utility controls to other phases of a price-guided economy, rather than primarily the protection of mystically defined property rights in case-by-case adversary litigation; to the extent that they indicate an increasing reliance upon records and business realities, rather than upon expert revelation; and in the degree to which the structure of regulation is so tightened and pointed that it becomes less attractive for utilities to seek earnings by exploiting the regulatory system, and, consequently, more attractive for them to concentrate their efforts on the selling of service. Encouraging tendencies are all plainly discernible today, but they are to be seen in clearest relief against the great backdrop of indifference which still dominates the regulatory scene.

Though the standards by which the effectiveness of regulation is judged are not exact, and perfect performance is not to be expected in any case, it is quite possible to identify specific defects of regulation in relation to rather widely accepted general goals, and, with considerably less agreement, to name remedies. The remedies, it may be noted, whether in the realm of government regulation or of government ownership, look universally toward more, or more intensive, control rather than less. There will be no reinstatement of competitive individualism in the utilities field. None the less, the final test of regulation may come in terms of its ability somehow to break through its rigidities and to supply the drive toward the lowest level of remunerative prices and the fuller utilization of facilities which has come thus far to be associated in the public mind more with the processes of effective competition than with those of private monopoly, however controlled.

Critically examining this conclusion in the Brookings Institution volume, one is tempted to ask what would happen if utility regulation fails to pass "the final test." Presumably, a trend toward public operation is implied in that event, which would also imply an increasing public dissatisfaction with private utilities.

"THE NEW RANGE WORKS JUST FINE BUT I CAN'T GET A DARN THING ON THIS RADIO"

But would this necessarily follow? The public has been known to be satisfied over long periods by less than absolutely perfect economic coördination between possible demand and prevailing price levels in other commodities than public utility service. After all, American utilities, like other American industries, have set a world-wide pace for industrial development. Is this not "success" by and large? Apparently no thought is given to the possibility, quite menacing in the light of the totalitarian example abroad, and the increasing exigencies of government finances, that these essential monopolistic services, once completely captured by the government, might be put to work as tax collectors, and the public could well be damned as far as cheap usage is concerned.

True, Professor Lewis' chapter does broadly and fairly concede that regulation is not to be judged by a standard of perfection. But the suggestion, even implied, that the concentration of governmental discipline and governmental competition in the field of utility pricing is an inevitable social trend, is mildly disturbing.

One could pick, at random, other commodities and perhaps find none which could meet the absolute test of being priced so low that the public can freely use all they want of them. For instance, if the government were to direct its mighty powers toward a yardstick for the pricing of razor blades or shoes or

ships or sealing wax, it could undoubtedly force the prices of these respective commodities down and the public consumption of them up, particularly if the venture were accomplished under the color of a by-product of some constitutional power such as national defense.

BUT that the government should dissipate the strength of its economic position and financial powers, buttressed by the tax-paying public, on such wide areas of diverse commercial enterprise is highly debatable. It might even be cynically observed that the government could concentrate some of its yardstick pressure on the costs of government itself, as reflected through the tax bills and public debt. There is certainly ground for speculation here as to whether the optimum of value in proportion to the price exacted from the public is being received.

And when one compares the relatively modest position of electricity in the average budget with the other commodities, including the cost of government services, there might be a question as to whether the government should continue to fire away pretty expensive ammunition at mighty small game, particularly at a time when the national and international woods are full of more obvious targets.

—F. X. W.

GOVERNMENT AND ECONOMIC LIFE. Volume II. By Leverett S. Lyon, Victor Abramson, and Associates. The Brookings Institution, Washington, D. C. 1940. Price $3.50.

New Depreciation Requirements and New Accounting Technique

DURING the last few years changes made in the accounting classifications prescribed by state and Federal regulatory commissions have created a number of serious problems. Probably the most serious is that which results from the recent setting up of barriers against utilizing retirement expense accounting for depreciation accounting.

Under the old system, where utilities had the option of utilizing retirement expense accounting, accumulated reserves averaged more than 10 per cent of the investment and physical property. Such reserves are substantial enough and in many cases are probably sufficient to comply with the new requirements for depreciation accounting, but there are undoubtedly cases where such reserves are not equal to the "actual" depreciation in the property.

For a number of years Maurice R. Scharff, well-known utility accounting expert, has been convinced that the only satisfactory solution to the problem of shifting from the old requirements to the new can be found by starting from the premise that, in valuation and rate cases, accrued depreciation and annual allowance for depreciation should be treated consistently. Such consistency might be obtained, he contended, by estimating annual depreciation expense through the process of adding "unrealized depreciation expense" (computed by dividing the percentage of accrued depreciation found to exist in the property by its weighted average) and the "realized depreciation expense" (computed on the basis of the average percentage of retirement loss and the fixed capital balance over a suitable period of years).

As a result of criticism of testimony which Mr. Scharff had offered in certain rate cases, he realized that this solution was oversimplified, and that the annual depreciation determined in accordance with it involved a certain amount of duplication or overlapping, to the extent that unrealized depreciation existing at the beginning of each year and the property retired that year were included in the computation of realized depreciation.

IN a volume recently released through private publication, Mr. Scharff presents his original thesis, in the form of a paper entitled "The Interdependence of

Annual and Accrued Depreciation in Regulation of Public Utility Corporations," together with appendices which contain suggestions designed to avoid the duplication noted.

In the same volume, an associate of Mr. Scharff, Franklin J. Leerburger, has a paper addressed to the engineering aspects of modern depreciation accounting technique, with special emphasis on the distinction between causes of depreciation that might reasonably be assumed to progress more or less in proportion to passage of time to those which become effective irregularly with respect to time.

Finally, the volume contains data prepared by a third associate of Mr. Scharff —a statistical expert, Joseph Jeming— who makes a number of helpful suggestions as to the mathematical methods for making allowance for variations of maintenance expenditures. The mathematical demonstrations which were ultimately completed by Mr. Jeming are given as formulae applied in depreciation studies carried out for several public utility companies.

ONE paper included in the volume by Mr. Jeming reports a novel method of approach to straight-line depreciation when actuarial data are lacking and is one which has been found helpful in income tax and other cases. This is followed by a discussion of straight-line depreciation which was prepared by Mr. Scharff.

The purpose of these three authors in publishing these miscellaneous papers on depreciation accounting technique is to explain the revised formulations to audiences of accountants, engineers, and lawyers, and to suggest to younger men in the specialized branches of these professions lines along which further investigations and analyses may be carried out with a view to accomplishing some further progress towards a final solution to this troublesome problem.

—F. X. W.

DEPRECIATION OF PUBLIC UTILITY PROPERTY. By Maurice R. Scharff, Franklin J. Leerburger, and Joseph Jeming. Privately published by Maurice R. Scharff, 285 Madison Avenue, New York, N. Y. 1940. 89 pp.

Notes on Recent Publications

COMMUNICATIONS AND TRANSPORTATION IN MEXICO. By Javier Sanchez Mejorada. *The Annals of the American Academy of Political and Social Science.* March, 1940.

RURAL REGIONS OF THE UNITED STATES. Survey by Work Projects Administration. U. S. Government Printing Office. Washington, D. C.

Rural Regions of the United States, prepared by the Division of Research of the WPA, presents a number of interesting facts about our rural population and economy. The findings show that the highest plane of living is enjoyed by our farmers in the Southern Pacific, North Atlantic, and northeastern regions. The largest farm land value per capita is found in the Southern Pacific and Upper Midwest regions, while the lowest land values are found in the Eastern Old South regions and in the Ozark-Ouachita region.

The report (scheduled to be available probably in June, 1940) also presents information on comparative income and potential purchasing power, population trends, types of land and types of farm tenancy and farm labor, length of residence of farm owners, the relationship of farm to nonfarm income, data on farm machinery, and many other pertinent facts.

A VARIABLE RATE BASE UNSOUND. By Charles O. Rose. 14 *U. of Cincinnati L. Rev.* 43. January, 1940.

THE WISCONSIN TELEPHONE CASE. By Martin G. Glaeser. *The Journal of Land & Public Utility Economics.* February, 1940.

The author, professor of economics at the University of Wisconsin, and for many years identified with the staff of the Wisconsin commission, in this article registers keen disappointment at the failure of the Wisconsin Supreme Court to decide this important rate case on other than more or less procedural grounds (30 PUR(NS) 65, 287 NW 122). Although published some weeks later, the article was apparently written before the recent action of the U. S. Supreme Court in refusing to review the decision of the Wisconsin Supreme Court, which set aside the commission's celebrated telephone rate reduction order.

The March of Events

To Confer on Securities Act Changes

In agreement with a proposal made by Jerome N. Frank, chairman of the Securities and Exchange Commission, Representative Clarence F. Lea, chairman of the House Interstate Commerce Committee, agreed on June 19th to delay hearings on bills for modification of the Securities Act until January, by which time the SEC would have studied the subject thoroughly in coöperation with the industry and reported its conclusions. The agreement definitely postponed action on revision of the Securities Act until after election and offered the prospect of final adoption of modifications agreeable to the regulators and the regulated.

In the meantime, the Investment Bankers Association, most outspoken proponent of revising the act, agreed to confer with the SEC on possible amendments to the law.

Emmett F. Connely, IBA president, said in a letter to SEC Chairman Frank, that he is "confident that, working together, we will be able to formulate appropriate amendment." IBA representatives would be ready to meet with the SEC at any time fixed by the commission, Mr. Connely said. Chairman Frank replied that "your offer to meet with us and others of the industry is most welcome," but he did not fix a time for a meeting.

Publication of the correspondence between the IBA and the SEC climaxed a week in which proposals to amend the Securities Act and Securities Exchange Act gained sudden impetus. The movement began when the SEC agreed to endeavor to reach an understanding with Stock Exchange members and investment bankers on amendments which could be recommended to the next session of Congress. Foremost among the proposed amendments was relaxation of the 20-day waiting period now required between the registration and offering of new securities; imposition of the waiting period would be at the discretion of the commission and not mandatory.

A proposed change of rules which would eliminate about 75 per cent of the hearings being held under the Holding Company Act recently received strong endorsement by representatives of utility companies meeting in Washington.

The representatives had been conferring with the Securities and Exchange Commission, and suggested only a few changes of wording. Joseph L. Weiner, director of the utilities division of the SEC, presided over the conference. It was his division that proposed the change and was said to have the support of all but one member of the 5-man commission. Memoranda prepared by the majority of the SEC and by Commissioner Robert E. Healy, the dissenter, have been made public through copies of the proceedings.

The proposed Rule U-8 would permit certain declarations and applications of holding companies or their subsidiaries to become effective after thirty days without hearing. In general all applications and declarations under the act except those under the "death sentence" (§ 11), relating to reorganization and applications for exemption, would be covered by the new rule.

Specifically, the new procedure would relate to all applications and declarations under §§ 6(b), 10, 7, 12(b), 12(c), 12(d), 12(f), and 8(c).

Cites Need for TVA Defense Funds

A warning of a possible "bottle neck" in the national defense program was sounded by Senator K. D. McKellar (D., Tenn.) in support of a $25,000,000 emergency appropriation for the Tennessee Valley Authority requested of Congress by President Roosevelt.

Although the Senate Appropriations Committee declined to include the new TVA fund in the recent $86,000,000 deficiency appropriation bill, Senator McKellar said he hoped to win congressional approval in the near future.

"These funds would be used to step up electric power needed to increase aluminum production for airplanes, nitrates for Army munitions, and other essential defense materials," McKellar explained. "The President has asked this appropriation, E. R. Stettinius of the Defense Council asked this additional electric power, and the Budget Bureau recommended the appropriation."

McKellar said most opposition of Senators within the committee was to the proposal for starting another dam in the TVA area (Cherokee dam on the Holston river, about 35 miles northeast of Knoxville).

Development of water transportation facilities along the Tennessee river, TVA Director James P. Pope said recently, is a vital part of national defense. In an address prepared for delivery before a meeting of city and county

officials interested in development of river terminals along the Tennessee, Pope said the time had come "when the resources of this nation, both in men and materials, must be organized for the defense of the country."

U. S. Collects from Boulder Dam

A $1,000,000 payment to the United States Treasury was expected to bring to $10,200,000 the amount repaid for construction of the $116,000,000 Boulder dam, the office of government reports announced last month.

The demand for Boulder electric energy and resultant revenues have outstripped all expectations, the office said. After three years of power operations at the world's greatest power plant, the gross income was about $2,000,000 ahead of that anticipated when financial plans were first drawn up.

Income for the 1940 fiscal year was expected to exceed $4,500,000, bringing power plant revenues received from July 1, 1937, to June 30, 1940, under Boulder dam's 50-year power contracts, to approximately $11,300,000.

When the Bureau of Reclamation makes its next $1,000,000 payment, it will bring repayments to the Treasury for the fiscal year just ended to $3,700,000. Gross income from the plant has shown steady increases as generators of unparalleled size have been installed one after the other to meet the unexpected demand for power.

TVA Tax Replacements Sanctioned

THE Tennessee Valley Authority received congressional sanction to make contributions to states and counties to replace taxes formerly paid by public utilities. The House endorsed the Norris-Sparkman bill by a vote of 205 to 178 despite the insistence of Chairman May of Kentucky of the House Military Affairs Committee that the beneficiaries of TVA electric rates should make up tax losses "and get a taste of what government operation in competition with private enterprise means."

TVA supporters, among them Majority Leader Rayburn, supported the bill as "only just and fair." The bill came before the House for the first time on June 21st as a "rider" on the Relief Appropriation Bill.

Chairman Cannon of the House conferees recommended acceptance of the amendment. After the vote, it went back to the Senate as part of the relief bill. Under the Norris-Sparkman bill, 10 per cent of TVA's power revenues in the next fiscal year would be used to pay states and counties amounts equal to the property taxes they formerly collected from generating and transmission facilities the TVA acquired from the Tennessee Electric Power Company and other utilities. In the payments would be 40 per cent of the taxes formerly collected on lands acquired for TVA's dam-reservoirs.

The payments would amount to about $1,400,000 annually, and while about $900,000 would go to Tennessee, the rest would go to Alabama, Mississippi, Georgia, North Carolina, and Kentucky.

The taxes intended to be covered by the bill do not comprise all tax losses occasioned by the TVA program, which run about $4,000,000.

Urges Taking over Railroads

WILLIAM J. Wilgus, engineer and transportation expert, declared recently that the country's railroads should be taken over by the Federal government at once in the interests of national defense. In an address before the summer convention of the American Institute of Electrical Engineers, meeting jointly with the American Engineering Council, Mr. Wilgus asserted:

"After all, it is to our means of intercourse that we must look for the preservation of our civilization, for the continuance of the institutions we hold dear. Doubly is this true in these days of peril when we must be prepared, and that quickly, to back our Army and Navy to the limit. Neglect in this, especially in a land so broad as ours, may well lose to us their fight in our defense, as have the shortages in tanks and airplanes brought defeat to the Allies across the sea."

He contended that private ownership of "our financially stricken disunited railroads is doomed," and added that "upon their amalgamation into a harmonious whole under Federal auspices, their pressing needs for rehabilitation and improvement may be met and some form of coördination with their rivals in transportation brought about, all in the public interest."

Dangers of Overvaluation

PAUL J. Raver, Bonneville Power Administrator, on June 28th cautioned business men of the Pacific Northwest "not to kill the goose that lays the golden eggs" by boosting land values in the face of industrialists interested in establishing new plants to utilize low-priced power being developed on the Columbia river by the Federal government.

Speaking before the Portland, Oregon, Realty Board, Administrator Raver predicted great economic growth in the Pacific Northwest as the result of the construction of the Bonneville and Grand Coulee dams if the long-range benefits to the region and its people of these developments were not sacrificed to attempts to make immediate profits.

After discussing the dangers of overvaluation of industrial sites, Raver cautioned business men against the other extreme of offering tax exemptions to new enterprises, pointing out that such practices would result in one city being played off against another, and in hard feelings within cities because of discrimination.

Asks Utility Seizure

A BILL authorizing the president of Argentina to expropriate the physical assets of foreign-owned public service companies operating under concessions granted by the government was introduced in mid-June by Senator Matias Sanchez Sorondo, Independent Democrat.

Passage of the measure would affect all telephone companies throughout Argentina, the country's chief railroads, street car systems, subways, and other transportation facilities, most of which are British-owned. There are, however, some American, German, French, Italian, and Belgian public service companies in the South American republic.

The two principal American utility systems represented and presumably vulnerable to the effects of the proposed expropriation bill, if enacted, are American & Foreign Power Co., Inc., and International Telephone & Telegraph Corporation.

Arkansas

Asks Cheaper Gas Rate

A PETITION asking that the Arkansas Louisiana Gas Company be compelled to reduce allegedly discriminatory wholesale rates charged the Camden Gas Corporation was filed with the Federal Power Commission June 19th. The complaint was mailed to the commission by P. A. Lasley of Little Rock, lawyer for the Camden company.

The plaintiff contended that the Arkansas Louisiana Company is delivering gas into its own local distribution systems in Texarkana, El Dorado, Louann, Norphlet, and Smackover at an average rate of 10.61 cents per thousand cubic feet. The delivery rate to the Camden distribution system, not operated by the defendant company, the petition said, averaged 21.61 cents per thousand cubic feet of gas.

The complaint said any reduction in rates which might be granted would be passed on "to a reasonable extent and in an equitable manner" to the Camden company's customers. Present rates force the Camden company to retail gas at higher prices than consumers pay in the other five towns listed, it was said.

The Camden company filed suit in Pulaski Circuit Court May 28th in an effort to recover $142,798.37 from the Arkansas Louisiana Company. The complaint said the amount was the difference between the total it paid for gas purchased between January, 1933, and July, 1939, and the amount it would have paid had it been charged the same wholesale rate as the Empire Southern Gas Company of Minden, La.

Iowa

Natural Gas Line OK'd

THE state commerce commission authorized the Northern Natural Gas Company of Omaha, Neb., to construct a feeder line from Ogden to Ames (Ia.). The line also would serve Boone, but would run south of that city.

E. M. Peterson, an attorney, appeared before the commission on behalf of the company. There were no objectors and the towns involved did not send representatives to the commission. It was said that the feeder line would be constructed of 10-inch pipe and would be about 20 miles long. It would connect with the Northern Natural Gas Company's main line at Ogden.

Both Boone and Ames now are served by a gas manufacturing plant operated at Boone by the Iowa Electric Light & Power Company. The line extends as far as Nevada. It will not be disturbed by the new arrangement, but it was indicated that some time in the future the natural gas line probably would be extended to Nevada from Ames.

Kentucky

TVA Contract Held Invalid

THE court of appeals, Kentucky's highest tribunal, upheld invalidation of a proposed contract between the city of Middlesboro and the Tennessee Valley Authority for the city's purchase of electric power.

The appellate court, affirming Bell Circuit Court, held that the city failed to comply with laws which require the advertisement of bids before a city may enter into a contract for more than $500.

The contract was attacked by the Kentucky Utilities Company. It was said to have been approved by the city commission in December, 1938.

Louisiana

Gas Tax Measure Amended

THE ways and means committee of the state house of representatives last month amended an administration revenue measure so as to cut the proposed processing tax on natural gas from 2½ cents per thousand cubic feet to ½ cent per thousand cubic feet.

In addition to this compromise provision, the ways and means committee wrote an amendment into the bill which described this tax as "an emergency" measure, to remain in force only until the conclusion of the legislative session of 1942.

The senate finance committee subsequently approved the measure. A proposal to increase the levy was rejected.

The natural gas tax, it is estimated, will produce about $1,750,000, and is one of the administration's revenue-producing sources which is intended to take the place of the one per cent general sales tax enacted at the 1938 session of the legislature.

The natural gas tax measure as originally drawn, it was estimated, would have yielded approximately $8,000,000 or about $2,000,000 more than the $6,000,000 that has been produced by the one per cent general sales tax.

Minnesota

Approves Continuation of Service

THE St. Paul city council gave unanimous final approval to ordinances which would permit the Northern States Power Company to continue its electric, gas, and steam-heating business in St. Paul until December 31, 1946. The company has been operating under a permit expiring December 31, 1941. The ordinances passed recently add an additional five years to the permit.

These ordinances give the city the right to review the rate schedules after expiration of the present permit December 31, 1941. The company is also given the right at any time during the 6½-year period to go to the city for increased rates in the event operating expenses of the company increase over and above a normal increase due to the growth of business through causes beyond its control. In the event of such changed conditions, the company would be entitled to a revision of its rates to offset such increases, provided that such revised rates shall be just and reasonable and subject to reasonable regulation by the council. The company also agreed that before expiration of the extended permit, it would negotiate with the city for franchises.

Nebraska

Rejects Power Purchase

McCOOK voters, by a majority of more than 8 to 1, defeated at a special election in June a proposal to purchase local properties of the Nebraska Light & Power Company by issuing $425,000 in revenue bonds to finance the deal.

The total vote was 136 for and 1,110 against.

To Extend Maturities

A TIME extension on bond retirement for Nebraska's three major hydroelectric districts and coördination of their activities under a newly created board of managers was recently announced.

Under the plan, the $40,000,000 in bonds outstanding on the three projects would be retired over a considerably longer retirement time, but at the same average interest rate, which is 4 per cent. Originally the bonds were to retire in thirty years.

Managers of the three districts—Loup, Tri-County, and Platte Valley—now individually responsible to their three directing boards, would be organized as a coördinating board, directing the three districts for power, water storage, and water distribution as conditions warrant.

To Buy Power Plant

THE Consumers Public Power District contracted to sell a $1,240,000 bond issue to John Nuveen & Company, of Chicago, to buy outright the Columbus division of the Northwestern Public Service Company.

The district has been operating the property since October, 1939, under a lease-purchase plan, paying 5 per cent interest, and under the new plan would be able to save about $20,000 a year, officials said, since the bonds bear only a 3½ per cent rate. The securities are 25-year serial bonds. Bond company officials indicated the Nuveen firm planned to syndicate them.

Consumers District representatives promised additional rate reductions as a result of the

interest saving. They said lower schedules would be prepared for street-lighting, commercial, and industrial users.

Completion of financing arrangements represented a climax of Consumers' plans to obtain Northwestern's property in this area. The district's agreement with the firm contained a provision from the state that outright purchase would be possible, should the district obtain funds for it. The district distributes power purchased from the Loup River Public Power District.

New Jersey

Utilities Favored in Tax Case

JERSEY City and Hoboken failed in the state supreme court to obtain an order requiring payment of millions of dollars in gross receipts and franchise taxes by public utility corporations under a system favorable to them. Approximately $26,000,000 in 1938 and 1939 taxes, some of which has been paid, is involved in the litigation. Payment by the utilities has been held up by the dispute.

The case hinged on the method of assessment to be used in determining the shares of various municipalities in the levies—the valuations of local assessors or those of State Tax Commissioner J. H. Thayer Martin. The legislature transferred the assessment power from local assessors to Mr. Martin. The courts ruled the legislation unconstitutional.

After the legislature passed two 1940 laws validating Mr. Martin's assessments for 1938 and 1939 and two others establishing his method for future use, Jersey City and Hoboken won a supreme court decision that the validating acts were unconstitutional.

Senator Edward P. Stout of Hudson asked for a payment order under that decision. The court said it was concerned only with the constitutionality of the acts and could not grant his request. It was expected the case would go to the court of errors and appeals again for further review.

New York

Rate Cut Ordered

THE Queens Borough Gas & Electric Company was denied permission by the state public service commission to change several of the concern's rate schedules. The commission adopted instead a recommendation by Chairman Maltbie requiring temporary demand rates effective on July 1st, which would save the customers of the company about $100,000 annually.

These rates call for a demand charge as follows: First kilowatt of maximum demand, no charge; all use in excess of one kilowatt, $1.65 a kilowatt. Emergency charge: First 12 kilowatt hours or less (on a meter in a month), $1; next 42 kilowatt hours, 6 cents each hour; next 42 kilowatt hours to a kilowatt of maximum demand, but not less than 130 nor more than 370, 4.5 cents each; all excess kilowatt hours, 2 cents each.

No monthly bill, except for minimum charge, was to exceed $1 for the first 12 kilowatt hours or less. The next 63 kilowatt hours are to be at 6 cents each, and the following, 1,475 kilowatt hours, at 4.5 cents each. All use in excess of 1,550 kilowatt hours was to be at 3 cents each.

The minimum charge would be $1 a meter a month, plus 50 cents a kilowatt in excess of one kilowatt of the maximum demand per month.

North Carolina

Favors Hydro Plants

THE North Carolina Utilities Commission gave its approval to the construction of two giant hydroelectric projects in the extreme western part of the state—one on the Nantahala river in Macon county and the other on the Tuckaseegee river in Jackson county—by the Nantahala Power & Light Company of Franklin.

The two undertakings, estimated to cost between $10,000,000 and $15,000,000, were necessitated by increasing needs of customers producing war materials, as well as the requirements of other users, representatives of the firm told Utilities Commissioner Stanley Winborne.

The power company on July 1st signed contracts with the Morrison-Knudsen Company for construction of the Glenville hydroelectric project and with the Utal Construction Company for the building of the Nantahala project.

Ohio

To Double Plant Capacity

To meet anticipated increases in power demand in the Cleveland area as a result of the national defense program, Cleveland Electric Illuminating Company is doubling the capacity of its new power plant now under construction, according to Eben G. Crawford, president.

A second 60,000-kilowatt turbo-generator would be installed at a cost of $1,900,000. This additional unit, together with the 60,000-kilowatt unit called for in the original plans, announced last fall, would increase generating capacity of the company's system by about 25 per cent and would bring total cost of the new plant to $8,200,000. The first unit is scheduled for completion in May of 1941, and the second unit about a year later.

"The company's present electric generating capacity exceeds by a substantial margin any demands we have had so far, or any normal demands we can foresee in the near future," Mr. Crawford said. "However, we have decided to order the second generator at this time as insurance for the future, especially since national defense preparedness is expected to bring abnormal industrial activity in the Cleveland area and corresponding increases in demand for power," he said.

Oklahoma

May Take Part of GRDA Power

CHAIRMAN Ray McNaughton of the Grand River Dam Authority recently confirmed reports that consideration was being given a proposal of a 10- or 15-year contract by which Oklahoma Gas & Electric Company would take one-fourth of all Grand River Dam Authority power.

The agreement, subject to PWA approval, would call for the utility to take 4,420,000 kilowatt hours monthly.

Pennsylvania

Gas Pipe Line Proposed

A PROPOSAL to build 117 miles of pipe through Pennsylvania to carry natural gas from West Virginia into Binghamton, N. Y., recently went before the state public utility commission for hearing.

The application was made by the Manufacturers' Light & Heat Company, the Pennsylvania Fuel Supply Company, and the Manufacturers' Gas Company. The line would be built for the Home Natural Gas Company of Binghamton, an affiliate of the three firms, which have headquarters in Pittsburgh.

The project includes a new compressor station and dehydration plant near Ellwood City, another compressor station near Brookville, and three measuring stations. The cost is estimated at $1,684,759. The sum would be borrowed by the three Pennsylvania companies from their parent firm, the Columbia Gas & Electric Corporation.

Gas Rate Case Settled

THE state public utility commission swept the 8½-year-old Williamsport natural gas case from its book in an order finding that rates of the Pennsylvania Power & Light Company "did not produce unreasonable or excessive returns."

The case is second only in length to a rate case that ran for fourteen years against the Pennsylvania Gas Company. The commission stated:

"It necessarily follows that no reparations are due or payable on account of natural gas service charges for the period prior to February 15, 1940."

In a 4-to-1 decision, the commission arranged for amicable settlement between the city of Williamsport and the power company, effective February 15th, in which the PP&L agreed to an approximate $114,000 annual reduction in revenues and $100,000 to the city as "partial reimbursement" for its legal expenses. The commission noted that "this marks the first time in rate regulation in Pennsylvania that a public utility has agreed to pay rate case expenses of a complainant."

Orders Gas Rate Hike

THE state superior court recently permitted the Peoples Natural Gas Company of Pittsburgh to make an immediate increase in rates to small consumers. But the gas company must post a big bond, the court ruled, so that if subsequently the firm failed to prove that the higher rates were justified, the consumers would get their money refunded.

The court's decision was a reprimand to the

public utility commission, which last February 15th refused to permit the rate increase. The Peoples Natural Gas Company appealed the refusal. The superior court ruling was a 3-point opinion:

1. The company's appeal against the commission order was sustained.

2. The rate case was tossed back to the commission for further hearing.

3. The new rates, meanwhile, go into effect.

The increased earnings, the company estimated, would boost the firm's revenue about $1,200,000 a year. About 149,000 customers scattered in 11 western Pennsylvania counties, principallv Allegheny and Westmoreland, would pay the higher bills.

Farming Out Utility Litigation

AN ordinance permitting the farming out of utility litigation to a private firm was tabled for the second time on June 25th by the Pittsburgh city council. At the same time council indicated interest in a rate case against the Duquesne Light Company.

Turned down was an ordinance for membership in the Pennsylvania Public Ownership League, which sought a $20,000 fee, and 20 per cent of any rebate obtained by successful termination of a rate case. League Representative Harry Bastow argued that membership in the league would save the city money.

The motion to table the ordinance was made by Councilman Fred W. Weir, and seconded by Council President James L. O'Toole. Mr. O'Toole explained that action in tabling the motion was not a solution of the problem but merely a refusal "to retain the services of this group."

Mr. Bastow said he had gone to Mayor Cornelius D. Scully and sought to have the city enter proceedings with the PUC in a last minute attempt to possibly save $15,000,000 in reparations for western Pennsylvania. He estimated the city would obtain fully a half-year's electricity free as its share of the refund.

Rhode Island

Investigation Termed Needless

STATING that his department had been investigating electric rates throughout the state for several months, Horace L. Weller, director of the state department of business regulation, recently termed needless a resolution by Mayor John F. Collins of Providence asking the department to make such an investigation.

The board of aldermen on June 20th referred the resolution to a special joint committee appointed to investigate rates. The resolution went to the committee after two aldermen had protested consideration of the resolution.

Weller said his department's investigation of rates was almost completed and that the mayor's resolution might hinder progress of the probe. He said Public Utilities Administrator Benjamin M. McLyman had been studying the rates "to determine whether and to what extent further rate reductions would be in order this year."

William Webster, vice president of the Narragansett Electric Company, said his company had no comment to make in the matter.

The joint special committee on July 1st voted to have its clerk write the Federal Power Commission at Washington requesting a list of electric rates charged by cities comparable to the city of Providence in size and the amount of power used. It also instructed its clerk to write the president of the Narragansett Electric Company and obtain from him if possible the total valuation placed by the concern on its plant and equipment.

The resolution declared that rates charged by the Narragansett Company are, the FPC has indicated, among the highest in the nation.

Wisconsin

PSC Studies Gas Firm

THE state public service commission late last month was reported to have started its investigation of the Independent Natural Gas Company, of Bartlesville, Okla., a subsidiary of the Phillips Petroleum Company, which had applied for permission to pipe and sell natural gas in Wisconsin.

The commission ordered the natural gas utility to furnish it with the company's books in order to investigate accounts, practices, and activities of the company and to make an appraisal of the utility's financial condition. The commission will assess the utility the cost of its investigation.

The Independent Natural Gas Company seeks to construct facilities to pipe natural gas into the state from its fields in Texas. The utility estimates the pipe line will cost about $28,698,000. The main pipe line will be located near Milwaukee with lateral lines to points at or near Madison, Racine, Beloit, Fond du Lac, Sheboygan, and other intermediary southern points in the state of Wisconsin.

The Latest Utility Rulings

Federal Power Commission Assumes Jurisdiction Over Wholesale Gas Rates

THE Mississippi River Fuel Corporation was ordered by the Federal Power Commission not to increase rates for wholesale gas sold to the Laclede Gas Light Company, after the commission had disposed of objections to its jurisdiction. The commission held that the company had the burden of proof to sustain the increases proposed and that it had failed to produce evidence which was affirmative, concrete, and persuasive in order to discharge that burden.

The jurisdiction of the commission over the Mississippi company and its transactions with the Laclede Company was contested on several grounds. In the first place it was argued that the wholesale company had been organized and always operated as a private corporation, had dealt by private contracts only with selected customers, had never held itself out to serve the public, had not exercised powers of eminent domain, and had not dedicated its property to a public use. Application of the Natural Gas Act to it, an allegedly private enterprise, was said to constitute a taking of property without due process.

The commission was of a contrary opinion. It refused to pass on the validity of the Natural Gas Act but held that under the terms of the act this company and its business were subject to regulation. Notwithstanding charter provisions, the company was actually selling natural gas to industries and to distributing companies for resale for general public consumption. It was said that the facts in the record obviously negatived the assertion that the company's business was a private one unaffected with a public interest. A contention that its charter provisions were determinative of its status was said to be untenable, as the real test of the application of Federal power is not what a corporation is authorized to do or what its charter forbids it to do, but what it, in fact, does.

It was also urged that even if the company were subject to the Natural Gas Act, its prices to the Laclede Company were immune from regulation because they were contained in contracts entered into before the act became law. Such contention, the commission believed, must be rejected "for the contrary has been so repeatedly held by the Supreme Court that the question is no longer open." Midland Co. *v.* Kansas City Power & Light Co. 300 US 109, 17 PUR(NS) 113.

The further contention was made that the instrument filed by the company, designated as a supplement to a rate schedule, did not constitute a change of rates or charges or a new schedule, as was contemplated under § 4 of the Natural Gas Act, because the increased rates and charges proposed by the supplement were prescribed pursuant to the agreement between the companies dated October 23, 1931. The commission, however, held that it had power to suspend any change or new schedule of rates pending a hearing; and, said the commission:

> The proposed increased rates and charges in this case represent a change from those now being charged and are new in that sense. Following the principle of Producers Transp. Co. *v.* Railroad Commission, 251 US 228, PUR1920C 574, and Midland Co. *v.* Kansas City Power & Light Co. 300 US 109, 17 PUR(NS) 113, that a prior contract cannot affect present regulation, we hold that the proposed increased rates and charges constitute a "change" in rates

and charges and a "new schedule" within the meaning of § 4 of the Natural Gas Act.

The provisions of the Natural Gas Act, it was also asserted, were inapplicable as to the sale of natural gas to the Laclede Company because the act applies only to the sale of natural gas "for resale."

The point was urged that the Laclede Company mixed the gas it purchased with artificial gas and that the resulting gas was a different gas for resale; therefore, Laclede did not sell natural gas and it did not purchase the natural gas "for resale." The commission rejected this argument. *Re Mississippi River Fuel Corp. (Opinion No. 46, Docket No. G-150).*

Denial of Telephone Service Used for Criminal Purpose or for Improper Purpose

THE Michigan Bell Telephone Company was authorized by the Michigan commission to amend its rules relating to discontinuance of telephone facilities when used for criminal offenses or when so used as to affect injuriously the efficiency of the company's plant or services. These subjects are covered by two rules of the company.

One rule provided for discontinuance if objection to continuance is made by or on behalf of a governmental authority. The commission authorized an amendment so as to provide for such service denial, after notice, whenever a judge or certain designated law enforcement officers should represent in writing to the company that he has probable cause to believe that the service furnished at a designated location is being used in furtherance of the commission of a specified criminal offense and in such writing shall request that service be terminated. A limitation was inserted, however, to except cases in which the company is restrained by order of a court of competent jurisdiction from discontinuing service.

The rule relating to improper use was amended to authorize immediate cancellation of service if the use of the facilities or the manner of use tends to affect injuriously the efficiency of the general plant or service, or if a service or facility is used in a manner which substantially impairs the service of a particular customer. *Re Michigan Bell Telephone Co. (T-252-40.17).*

World Conditions and Preparedness Activities Require Suspension of Final Action on Rates

THE New Jersey Board of Public Utility Commissioners suspended final action and decision in a proceeding to obtain reductions in electric rates because of existing world conditions which would make any conclusion as to value of property, operating expenses, and rate of return unstable for any reasonable period in the future. The commission in taking this action imposed conditions, however, to protect the public interest.

International conditions, it was pointed out, had already affected the financial markets and price levels. The continuation of the war in Europe and preparedness activities of the Federal government, if past experience counts, said the board, would further affect such markets and price levels. The immediate future in its effect upon factors entering into rate making by order was said to be highly uncertain. This uncertainty was indicated by the probability of increased Federal income and other taxes to finance national defense. The board continued:

Last World War conditions, even before

our entry into the conflict, brought with them changing price levels to such an extent as to make the determining of fair value, operating costs, and fair rates impracticable through the process of formal proceedings, and the employing of such process had to be delayed until abnormal fluctuating economic conditions had again been replaced by conditions of some degree of stability.

As a condition of the suspension of final action the board required the company to file schedules of rates satisfactory to the board effecting a negotiated reduction and to file an acceptance of terms and conditions set forth by the board. The board retained complete jurisdiction to ascertain the effect of the reduction upon the company's revenue and to take such further action as might be required.

The company was called upon to waive all statutory limitations affecting retention of such jurisdiction and by such waiver to estop itself from raising, before the board or any court, any question of the effectiveness of such retained jurisdiction. The company was also required to file with the board monthly reports showing the effect of the reduction on revenues and expenses.

The classification of customers and the available schedules of rates, said the board, had been complicated over the years.

The company was therefore required to join with the experts of the board's staff in further study to achieve simplification of these schedules. *Re Jersey Central Power & Light Co.*

Inequalities in Telephone Rates Called Discriminatory

A TELEPHONE company was authorized by the Michigan commission to put into effect at one of its exchanges revised rates for local telephone service and to discontinue no-charge "toll" service between exchanges. Existing rates were found to be unlawfully discriminatory.

Rates at this exchange were found to be lower than rates for the same type of service at other exchanges of like size. Rates for extension stations were lower in the case of business service and higher in the case of residence service than the level of prevailing rates in the territory generally. Existing rates for extension bells of the ordinary type were higher than the rates generally applicable in the territory. Existing rates did not provide for exchange line mileage charges otherwise applicable to customers with urban classes of service outside the base rate area. These exchange rates at present provide for service to lodges and churches at a lower rate than the regular charge for comparable services furnished to other customers at the exchange. All the foregoing rates, charges, and practices were held to be preferential and discriminatory and not according to modern practices.

A predecessor company, through a rural line, had provided a single direct telephone circuit between two exchanges. This circuit was used to furnish unlimited interexchange of traffic on a no-charge basis, subject to the use of the circuit by rural customers. Since acquiring the property the present company had continued the free and unlimited use of the circuit, and to provide more adequate service to rural customers had constructed new rural telephone lines to which the customers were transferred.

Later the company had provided other adequate facilities for toll message service between the exchanges at rates and charges based on airline distances. As a result of continuing the free telephone circuit, practically no messages between the exchanges were being placed over these regular toll circuits. Unreasonable discrimination was held to exist under the circumstances. *Re Michigan Bell Telephone Co. (T-252-40.5).*

Rights of Minority Stockholders upon Sale of Utility Property

THE supreme court of New Hampshire discharged a bill brought by a minority stockholder to enforce an alleged obligation to retire his stock at its call price, or to have the transfer and sale of the defendant public utility's property and business to another public utility set aside. The court also held that the plaintiff had mistaken his remedy.

At the outset it was held that the transfer of a public utility's property to another one having been found by the commission to be in the public interest and having been duly authorized and approved by the commission, the authority given was an exercise of the power of eminent domain in the public interest in respect to the power company's dissenting stockholders.

The court said that the stockholders who were willing to sell their interest in the company pursuant to a transfer of its business and property to another public utility as authorized by the commission owed no fiduciary duty to the dissenting stockholders to vote against the transfer, since the statute permitting corporate consolidation, by its provision for the rights of dissenting stockholders, implies that the stockholders voting for consolidation have no relationship as trustees towards the dissenters in casting their vote.

With respect to the plaintiff's choice of remedy, it was stated:

> The public service commission's assent to the transfer was valid. It was a term of the assent necessarily implied that the transfer was subject to the condemnation statute. The plaintiff may claim that the transfer is ineffective to impair his security for payment, but not that the transfer is invalid.
>
> It follows that the plaintiff has mistaken his remedy. If he is dissatisfied to take the amount offered for his stock, his relief is by proceeding under the statutory method marked out (P. L. Chap. 246, § 25 *et seq.*). By amendment this proceeding may invoke it. The issue of fact to be tried will be the market or best ascertainable value of his stock on the date of the transfer of the power company's property August 8, 1936.

Perkins v. New Hampshire Power Co. et al. 11 A(2d) 811.

SEC Sees No Reason for Delay in Filing Answer In Integration Case

AN application by the Electric Bond and Share Company and its subsidiary companies for a postponement of the date for filing answers in an integration proceeding under § 11(b)(1) of the Holding Company Act was denied by the Securities and Exchange Commission on the ground that a simple answer might be filed without extensive research. In the absence of any intent to formulate and present any integration program at the present time, there appeared to be no occasion for further delay in the progress of the proceeding.

The notice and order contained allegations as to the facts relating to the holding company system, and it was said that if any erroneous statements of fact had been made, a brief scrutiny of records in the main offices would unquestionably suffice to disclose the error.

Whether the respondents chose to admit, deny, or otherwise explain their position regarding the allegation that the system was not an integrated public utility system, the commission was unable to perceive the need for the type of extensive research which was described in the application for delay. Such research, it was said, might be necessary in the preparation of evidence for purposes of hearings, but the only immediate problem was to file a simple answer admitting or denying or taking any other position in regard to this and other allegations of the notice and order. *Re Electric Bond and Share Co. et al. (File No. 59-3, Release No. 2038).*

New York Commission Adopts New Rules for Extensions of Water Service

As the result of a commission investigation of the rules, regulations, and practices of waterworks corporations in respect to the installation and maintenance of services and connections, the New York commission adopted rules applicable throughout the state. A great diversity in practice among the water companies was found to exist. By far the larger number of services had been constructed by consumers who furnished all the material and paid for all the work except the tapping of the main and insertion of the corporation stop, which was placed by the company for a tapping fee. Maintenance was usually paid for by the consumer as he paid the cost of installation.

The commission ruled that the cost of service pipe and meter should not be included in any surcharge for extensions, as the expense for such facilities should be and normally is included in the regular rates, regardless of whether connected to a main already laid or to a new main laid under the new rule. It was considered reasonable to reduce a 100-foot standard to 75 feet in the rule relating to surcharges on main extensions. As amended, the rule would require the water companies to construct at their own expense only 75 feet of main for each customer.

It was held to be reasonable to require all water pipes within public streets to be constructed and maintained at company expense. Most of the companies had adopted the practice of furnishing service pipes to the curb instead of the property line. It had been argued that in many cases the street line is not well defined, that the area between the property line and the sidewalk is frequently occupied by customers' lawns and gardens, and that damage suits would result from disturbance of the sidewalk area by a public utility. These objections were not convincing to the commission, which said:

> The property owner should not be required to provide or pay for a service beyond the area which he owns. It is the company's duty to construct, provide, and maintain property in the streets. The franchise covers the use of public property, not private property. It may well be contended that the inhabitants cannot be supplied unless the pipe is laid to their property line.

There was held to be no basis for different rules in the city of New York. Reasonableness, it was said, is not measured by what the city authorities do or do not do in operating a water plant. In several respects, in the opinion of the commission, the city of New York operated its system unreasonably. It made consumers pay a year in advance. It demanded 7 per cent interest on delinquent accounts. It made property owners and consumers pay for part of the water system that was not on their property but on the city's property—the public streets. *Re Rules, Regulations, and Practices of Water Works Corporations (Case Nos. 8952, 9328).*

Interstate Motor Carrier Operations to Evade State Regulation

The Pennsylvania commission, in holding that a motor carrier company had operated within the state unlawfully without authorization, found that transportation between two points in the state over a route passing outside of the state was not in good faith but was a mere subterfuge. Drivers instructed to use an interstate route had in several cases used intrastate routes, and it was held that the company had acquiesced in such conduct. It was said by the commission:

> The cumulative effect of the evidence pro-

> duced against respondent is conclusive. Starting with the thinly disguised and apparent attempt to avoid intrastate regulation by routing freight via Wilmington, Delaware, we have the statements of the drivers and admission of respondent's manager that they had knowledge that even the thin disguise was often disregarded. Nothing more than half-hearted, ineffectual efforts were ever made to enforce it.
>
> It seems that the proper tests of intrastate carriage should be the intent of the carrier as measured by the normal, regular, or usual route of carriage and the origin and destination of the shipment.

The commission said it could go even further by stating that a mere deviation of shipments across the state line does not alter the fundamental undertaking. The origin and destination of the shipments were wholly intrastate. Even if it had not been shown that the normal route for such shipments had taken the shipments through other states, such fact in itself would not alter the carrier's intent to perform an intrastate operation. State boundaries, it was said, are for the purpose of defining governmental limitations but do not operate as a barrier to intrastate commerce if natural conditions suggest crossing the state line to reach more easily another point in the originating state. *Pennsylvania Railroad Co. v. Monark Motor Freight System, Inc. (Complaint Docket No. 12718).*

Other Important Rulings

THE Washington Supreme Court held that an ordinance granting two franchise rights, one of which is referable and against which a valid referendum petition has been filed, and the other of which is not referable, is void in that it contains two incongruous grants. The right of the voters to demand a referendum, it was held, in respect to a referable franchise should not be defeated by the inclusion of that franchise in such an ordinance. *Washington Water Power Co. et al. v. Rooney et al. 101 P(2d) 580.*

The supreme court of North Carolina held that a municipality could not condemn a portion of a county homesite or of the public highways, in connection with the construction of a hydroelectric project, in the absence of legislative authority given in express terms or by necessary implication. Property devoted to one public use could not be condemned for another public use. *Yadkin County v. City of High Point et al. 8 SE(2d) 470.*

The supreme court of Oklahoma has held that where the corporation commission is engaged in hearing a proceeding dealing with the general investigation of rates and during the proceeding the applicant calls up for hearing a proceeding or application to establish temporary rates which has been filed and the corporation commission refuses to hear the same during the proceeding to investigate the rates, such order is not an appealable order under the state Constitution and laws relating to appeals. *Southwestern Bell Telephone Co. v. State et al. 101 P(2d) 798.*

The New York commission, in a case where it held that the company had failed to sustain the burden of proof in support of increased gas rates, ruled that contributions made by others should be deducted from the rate base, that a fair price for gas sold for resale cannot be determined without knowing the items of cost to the seller and the relation of peak loads, that no allowance should be made for contingencies in the absence of supporting evidence, and that it is not possible to fix a depreciation allowance where the original cost cannot be determined from the record. *Re Long Beach Gas Co. (Case Nos. 9815, 9838).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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(DRAPER, Commissioner, concurs in part and dissents in part; MANLY, Commissioner, dissents.)

[May 1, 1940.]

ORDER *to show cause to determine whether rates charged by wholesale power company to one customer should not be made available to others; company ordered to make such rate available to other customers.*

By the COMMISSION: This proceeding was initiated by the Commission on its own motion by an order to show cause, adopted March 7, 1939, to determine whether the rates charged by the respondent for wholesale electric energy furnished to the city of Fergus Falls, Minnesota, should not be made available to the village of Marvin, South Dakota, the villages of Lake Park and Odessa, Minnesota, the cities of Breckenridge, Barnesville, and Ortonville, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company. It involves what is frequently termed a "discrimination case" as distinguished from a "rate case" and is founded primarily upon § 205(b) of the Federal Power Act, 16 USCA § 824d (b), which provides:

"No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, fa-

cilities, or in any other respect, either as between localities or as between classes of service."

However, the directions there contained with respect to undue preference or advantage, undue prejudice or disadvantage, and unreasonable difference in rates, charges, etc., are implemented by § 206(a) of the act, 16 USCA § 824e (a), which provides:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order."

In a footnote below is a statement concerning the subsequent formal steps taken in this matter prior to the hearing which was held at Fergus Falls, Minnesota, in June, 1939.[1] For the purpose of discussion and convenience, we have grouped the issues in this matter in two categories: Jurisdictional and substantive.

Jurisdictional Issues

[1–4] Respondent contends that we have no authority under the express provisions of the Federal Power Act over interstate wholesale rates charged to municipalities by public utilities otherwise subject to our jurisdiction. In support of its argument, respondent points to § 201(b), 16 USCA § 824(b), conferring jurisdiction over "the sale of electric energy at wholesale in interstate commerce, . . .," and particularly to § 201(d), defining the term "sale of electric energy at wholesale," as meaning "a sale of electric energy to any *person* for resale," in turn, to the definition in subdivision (4) of § 3 that "person" means "an individual or a *corporation,*" then further to the term "corporation" defined in subdivision (3) of the same section, particularly the last sentence thereof, as not including "municipalities as hereinafter defined," and finally to subdivision (7) of § 3, wherein "municipality" is defined as meaning "a city . . . , or any other political subdivision . . . of a state competent under the laws thereof to carry on the

[1] On April 15, 1939, the respondent filed its return to the order to show cause, alleging, among other things, that certain special considerations and conditions entered into the fixing of the rate for the city of Fergus Falls which did not prevail in the rates charged the other wholesale customers named in the order. The Commission on May 9, 1939, issued a further order finding that the return filed by the respondent failed to set forth information sufficient to justify or explain the circumstances which prompted the original show cause order and set the matter down for hearing directing the respondent to show further cause, if any, (1) why the rates for energy furnished the city of Fergus Falls, as provided in respondent's Rate Schedule FPC No. 7, should not be made available to the municipalities and companies previously named, and (2) why the Commission should not find that the rates for energy furnished the named municipalities other than Fergus Falls, and the Roberts County Power Company, and the Minnesota Utilities Company are unjust, unreasonable, or unduly discriminatory, and why the Commission should not determine the just and reasonable rates and charges for such service and fix them by order.

business of developing, transmitting, utilizing, or distributing power."

The practical effect of this argument would be that a utility may not discriminate in rates charged private persons or corporations, but is at complete and unfettered liberty to indulge in the rankest discrimination as between municipalities, or as between private customers and municipalities, receiving the same service. Such construction of the act would permit us to take action to remove undue advantages or preferences, undue disadvantages or prejudices, and unreasonable differences as between private customers of the public utilities subject to our jurisdiction, but, on the other hand, would require us to close our eyes and stand idly by, powerless to give relief where municipalities are being subjected to the same unjust treatment.

To determine our authority over interstate wholesale rates charged to municipalities, let us examine all the provisions of the Federal Power Act to ascertain the congressional intention. Chief Justice Taney, in an early decision of the Supreme Court of the United States, has stated:

"It is not by detached words and phrases that a statute ought to be expounded. The whole act must be taken together, and a fair interpretation given to it, neither extending nor restricting it beyond the legitimate import of its language, and its obvious policy and object."[2]

Statutes should not be literally interpreted at the expense of the reason of the law and so as to produce absurd consequences or flagrant injustice. They are to be construed "so as to avoid absurd or glaringly unjust results."[3] As the Supreme Court has aptly pointed out:

"Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body."[4]

The Federal Power Act of 1935 had its genesis in a desire to implement state regulation by placing for the first time under the jurisdiction of a Federal agency electric public utilities, interstate in character, considered beyond the sphere of state control, and thereby effectively to regulate, among other things, *"the sale of electric energy at wholesale in interstate commerce."* The congressional declaration of policy is indicative of the regulation contemplated. This declaration, contained in the first paragraph of Part II of the act, 16 USCA § 824(a), reads in part as follows:

"It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this part and the part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and *the sale of*

[2] Gayler v. Wilder (1850) 10 How. 477, 496, 13 L ed 504.

[3] Sorrells v. United States (1932) 287 US 435, 450, 77 L ed 413, 53 S Ct 210, 86 ALR 249.

[4] Church of the Holy Trinity v. United States (1892) 143 US 457, 463, 36 L ed 226, 12 S Ct 511.

such energy at wholesale in interstate commerce is necessary in the public interest, . . ." (Italics supplied.)

In support of the construction sought, respondent calls attention to the "specific and entire exclusion of the municipalities from the operation of the act" by the provisions of § 201 (f), 16 USCA § 824(f), which provides:

"No provision in this part (Part II) shall apply to, or be deemed to include, . . . a state or any political subdivision of a state, . . . unless such provision makes specific reference thereto."

Section 201(f) was expressly inserted in Part II of the act (and to apply to that part only) to inhibit the regulation of, among other things, the activities of a municipality or other state agency engaging in the transmission or sale at wholesale of electric energy in interstate commerce.

According to respondent's interpretation of §§ 201(d) and 201(e), a municipality is excluded from consideration in "this part and the part next following." Notwithstanding, it is observed Congress, under § 306, 16 USCA § 825e, has given the municipality the right to file a complaint against a public utility and, moreover, under § 313, 16 USCA § 825*l*, the right to have a court review of any order of the Commission by which said municipality is aggrieved. Since the most serious, if not the only real complaint a municipality could have against a public utility would involve the rates charged it for electric energy at wholesale (the Commission has no power to regulate the retail rates of the public utility), it is most persuasive Congress intended that we have jurisdiction over such wholesale rates. Under the circumstances can it be reasonably suggested that Congress, in granting a municipality the right to file a complaint, intended the Commission to be without (as respondent in effect asserts) jurisdiction, power, or authority to provide redress in satisfaction thereof? The palpable absurdity of the effect of this interpretation when tested against § 306 is only exceeded by the effect on § 313, where, under the interpretation of respondent, it is apparent the right of a municipality to seek court review of an order entered by this Commission is destroyed.

The practical effect of respondent's construction would be to create a situation where, in the same general vicinity, the citizens of one municipality would have the advantage of reasonable rates by regulation, whereas the citizens of the adjoining municipality could never be heard to complain because no agency of either a state or Federal government would have control over the rates charged at wholesale for such energy.

The mere statement of the consequences of the construction contended for by respondent, in our opinion, demonstrates the absurdity of that construction, and achieves a result directly opposite to the whole spirit of the Federal Power Act. Such a consequence "ought to be avoided, if it can be avoided, without a total disregard of those rules by which courts of justice must be governed," stated Chief Justice Marshall in Postmaster General v. Early (1827) 12 Wheat. 136, 146, 6 L ed 577.

In the enactment of the Federal Power Act, 16 USCA § 824(a), the

Congress declared that "Federal regulation . . . of . . . business which consists of the transmission of electric energy in interstate commerce and *the sale of such energy at wholesale in interstate commerce is necessary in the public interest. . . .*" (Italics supplied.)

Such declaration clearly indicates that the act then, is a highly remedial one, filling a manifest want, is worthy of a hopeful future, and on well-settled legal principles is to be liberally construed to further its life and purpose by advancing the benefits in view and retarding the mischiefs struck at. It evidences a public policy hammered out on the anvil of public discussion.

In dealing with a petition charging defendants with violating the Interstate Commerce Act by carrying out an agreement involving a carriage of coal for less than published rates on file and a discrimination forbidden by law, the Supreme Court of the United States said, in New York, N. H. & H. R. Co. v. Interstate Commerce Commission (1906) 200 US 361, 391, 50 L ed 515, 26 S Ct 272:

"It cannot be challenged that the great purpose of the act to regulate commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all, and to destroy favoritism, these last being accomplished by requiring the publication of tariffs, and by prohibiting secret departures from such tariffs, and forbidding rebates, preferences, and all other forms of undue discrimination. To this extent and for these purposes the statute was remedial and is, therefore, entitled to receive that interpretation which reasonably accomplishes the great public purpose which it was enacted to subserve."

The provisions of the Federal Power Act here involved, if construed as suggested by respondent, it is believed, would not avoid but rather invite glaringly unjust results.[5]

Reading the Federal Power Act in the light of its general purposes and applying the same with a view to effectuating those purposes, we believe that the interpretation sought by respondent must be rejected. We conclude, therefore, that authority over the sale of electric energy at wholesale in interstate commerce to municipalities by public utilities within the purview of the act not only poses a problem over which this Commission has jurisdiction but affords us opportunity to effectuate the congressional intention and to exercise jurisdiction in a field of great importance to the general public.

[5] The respondent asserts also that we have no jurisdiction over the rates which it charges Minnesota Utilities Company and Roberts County Power Company because these two companies were not made parties to this proceeding. This contention is untenable. We know of no principle of law which requires a utility's customers in such a proceeding to be joined as parties to a proceeding before a regulatory body involving the rates of such utility. This is so fundamental as to require no further discussion nor to call for setting out the various additional infirmities in this contention made by respondent.

Having carefully examined the objections and arguments addressed to our jurisdiction made by respondent,

[5] Sorrells v. United States, *supra.*

we find the issues here involved are squarely within the jurisdiction of this Commission.

Substantive Issues

In considering the substantive matters here involved, it would appear that these problems can be conveniently narrowed down to the following:

(a) Does there exist undue preference or discrimination within the statutory inhibition, and

(b) If we find that such preference or discrimination exists, are we powerless to act until we have concluded a complete "rate case?"

[6] Let us examine the record concerning the first point. The facts are reasonably clear. The respondent is an integrated electric public utility system composed of hydroelectric, oil engine, and steam plants, interconnected by about 3,500 miles of transmission lines and delivering energy to about 300 communities in which it owns and operates the distribution system and to approximately 47 communities which are served at wholesale. It operates in the states of North Dakota, South Dakota, and Minnesota. There seems to be no dispute that the respondent is "a public utility," as defined in the Federal Power Act, which owns and operates facilities (1) for the transmission of electric energy in interstate commerce, and (2) for the sale of electric energy in interstate commerce. Nor is there any dispute that the respondent sells electric energy at wholesale in interstate commerce and transmits such energy in interstate commerce through facilities owned and operated by it to the communities and companies named in the show cause order originally adopted by this Commission. Each of these wholesale customers, in turn, distributes energy at retail through its own distribution system.[6]

The respondent has contracts with each of the aforementioned customers and calls each contract a separate rate schedule. It serves the city of Fergus Falls, Minnesota, on the basis of a 2-part rate containing a demand charge and an energy charge. It serves each of the other municipalities at varying rates under a block form type of schedule which, among other things, gives no consideration whatever to the relationship between the demand placed upon the system by the customer and the energy consumed by such customer. The Minnesota utilities and Roberts county companies are each served according to a contract under which each company charges the uniform retail rates which the respondent charges in its own retail business and pays to the respondent (with slight variations unnecessary to point out here) 35 per cent of its total gross revenues received from resale at retail. The Fergus Falls rate is the only one which takes into account the special characteristics of consumption involved in the relationship between demand and energy.

All respondent's customers here involved belong in the same general class—wholesale customers. Wide variations in the terms and rates charged these customers exist.[7] The average rates paid by these wholesale

[6] Except the village of Marvin, South Dakota, of which the foregoing statement was true during the course of the proceedings, but which has sold its distribution system to the respondent since the close of the hearing. We shall refer to this transaction subsequently.

[7] See chart attached hereto, entitled "Appendix."

customers of respondent for energy during the year 1938 ranged all the way from 1.54 cents per kilowatt hour for Fergus Falls to 4.80 cents per kilowatt hour for Odessa and 5.90 cents per kilowatt hour for Marvin. It is obvious, therefore, that respondent has voluntarily made the lowest rates available to Fergus Falls.

The conditions under which all of these customers receive energy from the respondent are substantially similar. The record clearly establishes, for example, that there is close similarity among them with respect to delivery of voltage, seasonal characteristics, facilities of the respondent utilized in serving these customers, metering voltage, transformation, type of service, and metering points. It seems clear from the evidence that there is no substantial variation in the service conditions or in the characteristics of the delivery and sale of energy to these customers. This is especially true in view of the uncontradicted testimony that a "rate schedule such as the Fergus Falls or similar to that rate schedule would automatically give effect to (the) small variation in load factors" between the customers and "would result in a higher average rate for those customers with a low load factor than would result for those customers with a high load factor."

It is of some significance that the testimony of respondent's witnesses did not controvert these facts. There is no evidence in the record whatever indicating that the cost per kilowatt hour to respondent of producing and delivering energy to any one of these customers differs from the cost per kilowatt hour of producing and delivering energy to any other one of these customers. Despite respondent's contention that "differences in population warrant differences in rates," it offered no factual basis upon which the differences which exist in the form of rate and in the price of energy sold at wholesale to the customers involved in this proceeding under the different types of rate can be justified or even rationalized.

The testimony of the respondent's Vice President and General Manager Kennedy points out that the rates at which these customers are served were fixed by individual negotiation and bargaining between the respondent and the municipality or private company involved. He thus expressed it on direct examination:

"You understand that in any negotiations there is always a little give and a little take. We finally wind up with something that is agreeable to the company and agreeable to the customer."

The rate-making process by which these rates were arrived at is illustrated by Mr. Kennedy's testimony with respect to the Barnesville rate:

Q. Why should the level of rates in that town be on that level as compared with Breckenridge?

A. I personally negotiated the rate; I suggested one rate and they suggested another, and we finally came out with that rate. They didn't ask me and they didn't care about what Breckenridge or Fergus Falls had. They wanted to know what they could get and they got this rate. That is how they got the rate, how it was arrived at.

Mr. Kennedy summarized the entire process in the following manner:

Q. Is that the way the other rates were put in, on just a sort of a bargain proposition?

A. Sure; they all are. That is why we are here in this hearing; they are all by bargaining.

This is clearly illustrative of the genesis of the vice of discrimination which regulatory Commissions are almost uniformly directed to remove by the statutes under which they operate. As a matter of fact, the evil of discrimination was one of the prime motivating factors of the earliest regulatory statutes. The economic consequences of discrimination were well noted in Griffin & Bros. v. Maine C. R. Co. (1915) PUR1916A 27, 28, where it is stated:

"Unquestionably, of the two evils, discrimination in rates is more offensive than excessive rates because within reasonable limits shippers can adjust themselves to high rates, but not to unequal rates."

We need not go into the long history of abuses, discriminations, preferences, rebates, etc., which were the primary cause of the inhibition against this form of practice in the railroad regulatory statutes.[8] The inhibitions originally written into these statutes were substantially carried over into practically all other utility regulatory statutes.[9]

There is one other phase of discrimination which we should mention. Given a monopolistic position and the right to discriminate, an electric utility company is in possession of a strong and unfair weapon in its dealings with municipalities. The facts of this case point clearly to the manner in which this may come into play.

Marvin is a village of approximately 150 population. This small municipality had its own distribution system through which it served its people at retail with the energy which it purchased at wholesale from respondent. It is the smallest of the municipalities involved in this proceeding; was in the weakest bargaining position, and had the highest rate. Since, as Mr. Kennedy testified, rates for each municipality were determined by bargaining, by "a little give and a little take," it is not surprising that in view of these circumstances Marvin was required to pay the highest rates. It paid almost four times the price for energy that Fergus Falls pays. *Moreover, it is undisputed by the respondent itself that the rates charged to the village of Marvin were too high.* It appears in large part that the reason the rates were maintained at such a high level was to force the village out of ownership of its distribution system and to

[8] See I, Sharfman, The Interstate Commerce Commission, Chap. 1, p. 17:

". . . the open resort to discriminatory practices by the carriers became a constant source of agitation and complaint. These railroad discriminations assumed many forms, but none was more glaringly unjust or more obviously destructive of sound economic development than the grant of personal preferences to favored shippers."

[9] See: "A Comparative Survey of Railroad and Public Utility Laws. The Report of a Special Committee on Uniform Regulatory Legislation to the National Association of Railway and Utilities Commissioners" (1923) pp. 128–134.

See also: Glaeser, "Outlines of Public Utility Economics" (1931) p. 237:

"Another legislative standard contained in the public utility laws of *practically all states* prohibits discrimination in rates or service. The administrative commissions are given the power to prevent unjust and unlawful discriminations or to prohibit rates and practices unduly preferential."

require it to dispose of its facilities to the respondent, for Mr. Kennedy further testified as follows:

Q. Is there any reason in your mind why the rates to Marvin should not be lowered?

A. You mean wholesale?

Q. Wholesale?

A. I think that probably should be but lowering the rate isn't going to help the situation properly, as under our retail rates they are not in a position, a little town like Marvin, with a population of 150, is just out of luck, that's all.

Q. Now looking particularly to the town of Marvin and the rate schedule as made available to it, it is a foregone conclusion from the wholesale rates that are effective there, that there is no possibility of that town selling energy, on a rate schedule comparable with anything that is published by the Otter Tail Power Company for the retail sale of electric energy to its ultimate consumers, is it?

A. I wouldn't think so, no.

Q. From your standpoint, wouldn't it be desirable to establish a rate to them on a basis that would be comparable with the rates charged by the Otter Tail Power Company?

A. Well, not as you suggest but as I might suggest this, that they come in with the Otter Tail Power Company and (we) serve them direct.

Q. You want them to give up what they own as a municipality?

A. We have suggested: Why not sell your distribution and things to us and take the same type of rate that a town on the Otter Tail Power Company system would have and give it to them. We have made that suggestion.

Continuing, Mr. Kennedy testified:

Q. Have you ever had a request from Marvin for a reduction in rates?

A. I think we have.

Q. But you haven't seen fit to grant it?

A. No because we are trying still to tell them that that is not the solution. It is not the solution of the problem. It is easy enough to make a reduction in rates, but a little later on we will have to meet the same problem again. That is not the solution of it.

After having pointed out that a little town like Marvin "is just out of luck, that's all," Mr. Kennedy proceeded to testify that ". . . a town of that size shouldn't attempt to buy current."

Q. But they might be in a better position if they were buying it at a rate that would encourage some further use of it (at) retail?

A. If you gave them the current —if we were to give them the current evenly, they would go to pieces. They know nothing about it. They have a distribution system that is going to fall down one of these days and *the proper thing for them to do is to forget it and let us buy it.*

Whether or not that was the proper thing for the village of Marvin to do, the facts are that it has finally done so. After the conclusion of the hearings, Marvin sold its distribution system to the respondent on September 19, 1939. Thus, this little municipality which had had its own distribution system for many years but which was required to pay the highest wholesale

rates of all municipalities involved in this proceeding, finally capitulated and the respondent achieved its objective of acquiring its distribution system.

The record indicates that the respondent also is convinced that Odessa should not operate a municipal plant. The village of Odessa is the next smallest of the municipalities served and has the next highest rates. Mr. Kennedy testified concerning it as follows:

Q. Are you of the opinion that that rate (the rate under which Odessa is served by the respondent) is also too high, Mr. Kennedy?

A. That again is a case where the town shouldn't be in business. They own the telephone and electric light system, and both of them are about ready to collapse.

. . . . . .

Q. You will admit it, the rate to Odessa is unreasonable, would you?

A. No, I wouldn't want to admit it as unreasonable but—

Q. But what?

A. The rate should be reduced.

The foregoing is illustrative of the conditions which may and do exist when the sole power to determine rates is left within the hands of the utility which has a monopoly of the service and when, in addition, the utility has the power to discriminate against customers in a weak bargaining position. It clearly illustrates the reasons why Congress, following the pattern of the usual regulatory statutes, declared such discriminations unlawful.

An examination of the record discloses (1) that the customers here involved are all in the same class,—wholesale customers, and that the same kind of service under substantially similar conditions is rendered to each of them; (2) that there is an absence of showing by respondent that substantial lawful differences in cost of service or operating conditions exist justifying the differences presently existing in rates charged to the different customers of respondent involved in this proceeding; (3) that the respondent has voluntarily made available to the city of Fergus Falls, Minnesota, the rate presently charged by said respondent to it; and (4) that although the other communities and companies are wholesale customers within the same class or classification as Fergus Falls, said respondent has failed to make available to any of them the same rate or charge for services paid by Fergus Falls, notwithstanding the admission of the vice president and general manager of respondent that the rates to certain of the communities should be reduced.

Upon such a record, therefore, we conclude that respondent, by its failure to make available to the other communities and companies involved in this proceeding the same rate voluntarily charged Fergus Falls, is unlawfully subjecting such other customers to undue prejudices or disadvantages and granting undue preferences or advantages to Fergus Falls, and that such practice by respondent is unjust, unreasonable, unduly discriminatory and preferential, in violation of the pertinent provisions of the Federal Power Act.

[7–12] Respondent contends that not only is there nothing in the record to permit us to remove such discrimination as exists but that if we do

remove it by requiring the respondent to serve the other customers here involved at the Fergus Falls rate, the record shows affirmatively that the rates would not only be unjust and unreasonable but confiscatory. This contention would appear to require this Commission, before being able to remove a patent discrimination, such as here exists, to conduct a complete "rate case." To accept such a construction of the applicable provisions of the Federal Power Act would be to render it ineffective for the reasonable accomplishment of its intended purposes.

The respondent apparently claims that it is now selling energy to Fergus Falls at less than cost. Hence the argument is made that obvious as the discrimination may be, we are powerless to require respondent to remove it and to serve the other customers involved in this proceeding at the Fergus Falls rate, *all because respondent itself, has voluntarily undertaken to serve Fergus Falls at a confiscatory rate.* We do not at this time go into the method by which the respondent purports to arrive at a cost of generation and transmission since it would serve no useful purpose here. We observe that the record is barren of evidence of cost of service to these customers. We point out, too, that the respondent, itself, fixed the Fergus Falls rate and there is nothing before us to show that the respondent voluntarily undertook to serve Fergus Falls under such conditions as would result in confiscation of the respondent's property. In this connection we are reminded, as Mr. Justice Cardozo pointed out in Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 312, 78 L ed 1267, 3 PUR(NS) 279, 294, 54 S Ct 647, that:

"It is a strain on credulity to argue that the appellant, when putting into effect a new schedule of charges, was satisfied with one productive of so meager a return. . . . The argument proves too much; . . . Men do not transact business without protest at confiscatory rates, at all events in the absence of extraordinary circumstances making submission to the loss expedient. . . ."

Respondent claims that there are special considerations involved in its dealings with Fergus Falls which are reflected in the Fergus Falls rate so that the *money* which it receives from the Fergus Falls rate does not represent the entire consideration moving to the respondent from the city for the service. We have examined the record in this respect and find no basis therein for coming to a conclusion that the Fergus Falls rate does not stand on its own or was arrived at by any process than the usual process of negotiation described by the respondent's Vice President Kennedy. It would appear, however, that because of its superior bargaining position, Fergus Falls was in a better position to negotiate than Marvin, Odessa, and the others.

The respondent in any event has no standing to assert a claim of special consideration in fixing the Fergus Falls rate for it is an established principle of regulation that a public utility rate must contain the entire consideration for the service rendered, as was aptly said by the court in Chicago, I. & L. R. Co. v. United States (1911)

219 US 486, 496, 55 L ed 305, 31 S Ct 272:

"The decisive question in this case is whether the contract between the railway company and the Munsey Company is repugnant to the acts of Congress regulating commerce. In other words, could the company, in return for the transportation which it agreed to furnish and did furnish to the Munsey publisher over its interstate lines, and to his employees and to the immediate members of his and their families, accept as compensation for such service anything else than money, the amount to be determined by its published schedule of rates and charges? Upon the authority of Louisville & N. R. Co. v. Mottley (1911) 219 US 467, 55 L ed 297, 31 S Ct 265, 34 LRA(NS) 671, just decided, and according to the principles announced in the opinion in that case, the answer to the above question must be in the negative. The acceptance by the railway company of advertising, not of money in payment of the interstate transportation furnished to the publisher of the Munsey magazine, his employees and the immediate members of his and their families, was for the reasons given in the Mottley Case, in violation of the commerce act. The facts in the present case show how easily, under any other rule, the act can be evaded and the object of Congress entirely defeated. The legislative department intended that all who obtained transportation on interstate lines should be treated alike in the matter of rates, and that all who availed themselves of the services of the railway company (with certain specified exceptions) should be on a plane of equality. Those ends cannot be met otherwise than by requiring transportation to be paid for in money which has a certain value known to all and not in commodities or services or otherwise than in money."

The same principle is enunciated in Fullerton Lumber Co. v. Chicago, M. St. P. & P. R. Co. (1931) 282 US 520, 521, 75 L ed 502, 51 S Ct 227:

"It has long been settled that payment of a carrier's charges must be made in money; and that the payment must be cash as distinguished from credit. The purpose of the requirement is solely to prevent rebates or unjust discrimination and to ensure observance of the tariff rates. Compare Chicago & N. W. R. Co. v. Lindell (1930) 281 US 14, 16, 74 L ed 670, 50 S Ct 200. . . ."

In the Lindell Case referred to, the court said, at p. 16:

"The purpose of the act to prevent discrimination has been emphasized by this court and is well known. Since its enactment carriers may not accept services, advertising, property, or a release of claim for damages in payment for transportation. They are required to collect the established rates, charges, and fares from all alike in cash."

While the foregoing decisions involve language expressly forbidding acceptance of compensation different from that specified in published rates, in statutes prohibiting rebates and other forms of unjust rate discrimination, we see no reason why the rule announced therein should not be made applicable here.

The supreme court of the state of North Carolina in the case of Salisbury & S. R. Co. v. Southern Power

Co. (1919) 179 NC 18, PUR1920C 688, 101 SE 593, 12 ALR 304; 179 NC 330, PUR1920D 560, 102 SE 625; (1920) 180 NC 422, PUR 1921B 774, 105 SE 28, had before it a case arising out of an attempt by the Southern Power Company at the expiration of a contract with the Salisbury and Spencer Railway Company, to increase the rates and charges for electric energy. Southern Power Company supplied energy to a subsidiary company, Southern Public Utilities Company, at a rate which was less than the old rate charged the railway company and likewise materially less than the new rate which the power company sought to impose. The case went to the supreme court of North Carolina three times and the court repeatedly insisted that the lowest rate which the power company voluntarily maintained was the rate which the power company was required to establish for service to the railway company so that there might be no discrimination among its customers in the same class. The court was careful, however, to point out that the adoption of such a rate by the court in order to remove discrimination was not tantamount to an order fixing the rate nor was the power company required to continue to maintain that level of rates but so long as it voluntarily maintained a lower rate to a customer in the same class, all other customers were entitled to that rate. The court, speaking through the chief justice, on the last appeal said:

"This well-recognized principle of law has already been correctly stated by this court in this case, by the chief justice, 179 NC at p. 34, PUR1920C at p. 707, 101 SE at p. 601, where it is said:

"'It will not be difficult for the court, upon the hearing, to determine the lowest rate charged by the defendant for current and power furnished cotton mills, factories, municipalities, or other public service companies, under the same or substantially similar conditions. The lowest rate thus established will automatically become the proper rate to be charged the plaintiffs for such service. Otherwise, the defendant will still be unlawfully discriminating against the plaintiffs.'

"By the application of this doctrine the court does not fix defendant's rates, but simply adopts the lowest rates which the defendant power company itself has fixed for the same, or substantially similar service."

In a related case the circuit court of appeals for the fourth circuit confirmed the conclusion of the North Carolina state supreme court in North Carolina Pub. Service Co. v. Southern Power Co. (1922) 282 Fed 837, PUR1923A 289, 33 ALR 626.

The Supreme Court of the United States in the case of Alabama & V. R. Co. v. Mississippi R. Commission (1906) 203 US 496, 500, 51 L ed 289, 27 S Ct 163, had under consideration an order of the Railroad Commission of the state of Mississippi which required that all shipments of grain products between two points in the state were to be handled at the same rate. The order was designed to remove discrimination resulting from a rebilling rate which was only available to shippers who had within ninety days received like shipments over plaintiff's railroad. In the Su-

preme Court of the United States it was contended that the rate fixed was less than the actual cost of haulage. The court, in reply to this contention, stated:

"While it may be true that a local railway's share of an interstate rate may not be a legitimate basis upon which a state Railroad Commission can establish and enforce a purely local rate, yet whenever, under the guise or pretense of a rebilling rate, some merchants are given a low local rate the Commission is justified in making that rate the rate for all. It is not bound to inquire whether it furnishes adequate return to the railway company, for the state may insist upon equality, to be enforced under the same conditions against all who perform a public or quasi public service. When voluntarily the Vicksburg company established a local rate of 3½ per cent from Vicksburg to Meridian for those who had within ninety days made a shipment over the Shreveport road, it estopped itself from complaining of an order making that rate applicable to all shipments, no matter whence they arose, and in favor of all merchants, whether those transporting over the Shreveport road or not. . . .

"Even if a state may not compel a railroad company to do business at a loss and conceding that a railroad company may insist, as against the power of the state, upon the right to establish such rates as will afford reasonable compensation for the services rendered, yet when it voluntarily establishes local rates for some shippers it cannot resist the power of the state to enforce the same rates for all. The state may insist upon equality as between all its citizens, and that equality cannot be defeated in respect to any local shipments by arrangements made with or to favor outside companies."

The court, in Western U. Teleg. Co. v. Call Publishing Co. (1901) 181 US 92, 100, 45 L ed 765, 21 S Ct 561, has very pointedly stated that "all individuals have equal rights both in respect to service and charges."

In fact, for many years the Interstate Commerce Commission has administratively interpreted provisions of the Interstate Commerce Act (similar to the rate provisions of the act before us) as empowering that Commission to prescribe a rate found to be reasonable for the purpose of removing a discrimination without making a finding that it is just and reasonable per se. Sprunt & Son v. United States (1927) 23 F(2d) 874, 878, where a 3-judge court approved such interpretation as a fair construction of the words "just and reasonable" rates. A common-sense construction of §§ 205 and 206 of the Federal Power Act, 16 USCA §§ 824d, 824e, impels us to accept the principles announced in the foregoing cases as being equally applicable in solving the problem with which we are confronted in this case.

It occurs to us that one rate in its relation to another rate may be discriminatory, although each rate per se, if considered independently, might fall within the zone of reasonableness. There is considerable latitude within the zone of reasonableness in so far as the level of a particular rate is concerned. The relationship of rates within such a zone, however, may result in an undue advantage in favor of

one rate and be discriminatory in so far as another rate is concerned. When such a situation exists, the discrimination found to exist must be removed.

For the purpose of removing a discrimination we interpret the statute to mean that the reasonable wholesale rate for any class of customers be not higher than the lowest rate charged by vendor utility to any customer for the same class of service under the same or substantially similar conditions. If a complete "rate case" is to be conducted before the patent discrimination existing in the instant case is to be removed, such would obviously place a strained construction on the act and render it ineffective for the expeditious removal of unjust discriminations.

From the foregoing, it would appear that the rates at which energy is sold to the communities and companies involved in this proceeding should be the same. By this we do not mean that the average price per kilowatt hour paid by each customer must be the same, but that, unless there are substantial lawful circumstances which justify a difference, the same rate schedule should be made available to all customers in a given class.

Since, as disclosed by the record, the communities and companies involved in this proceeding are wholesale customers of respondent within the same class or classification and respondent has not made available the rate voluntarily charged Fergus Falls, the lowest of the rates here involved, to any other of the said communities or companies, we conclude, therefore, respondent should be required to make such rate so available.

Findings

Upon consideration of the order to show cause, return thereto by respondent, the evidence adduced at the public hearing upon the issues and the briefs filed, in the above-entitled matter, the Commission finds as follows:

1. The respondent, Otter Tail Power Company, is a corporation organized under the laws of the state of Minnesota, owns and operates generating plants in the states of Minnesota and North Dakota, supplying electric energy to an interconnected electric transmission system, approximately 3,500 miles in length, in the states of Minnesota, North Dakota, and South Dakota, is engaged in the generation, transmission, and sale of electric energy by means of facilities owned and operated by it for distribution to the public in approximately 300 cities, towns, villages, and communities, and the sale at wholesale to approximately 47 other communities for resale to the public.

2. The respondent, by means of facilities owned and operated by it, transmits in interstate commerce and sells at wholesale in interstate commerce electric energy to the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, Ortonville, and Fergus Falls, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company, for resale to the public.

3. The respondent, by means of facilities owned and operated by it, transmitted in interstate commerce and sold at wholesale in interstate

commerce electric energy to the village of Marvin, South Dakota, up to approximately September, 1939, at which time said village sold its distribution system to the respondent.

4. Respondent is a "public utility" within the meaning of the Federal Power Act.

5. The transmission and the sale by respondent of electric energy to the municipalities and companies named in finding 2 is a transmission in interstate commerce and a sale at wholesale in interstate commerce of such energy within the meaning of the provisions of the Federal Power Act, and as such, together with the rates and charges, demanded, observed, charged, or collected by respondent for such energy, as well as the rules, regulations, practices, or contracts of respondent affecting such rates and charges are subject to the jurisdiction of this Commission.

6. The villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, Ortonville, and Fergus Falls, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company, purchasing electric energy from respondent, are in the same general class or classification, namely, purchasers of electric energy at wholesale for resale to the public.

7. Electric energy is delivered to the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, Ortonville, and Fergus Falls, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company by respondent under conditions which are the same or substantially similar with respect to delivery voltage, seasonable characteristics, facilities of the respondent devoted to such service, metering, and transformation.

8. Respondent sells and delivers electric energy to the wholesale customers involved in this proceeding under the same or substantially similar conditions of service.

9. Rates and charges demanded, charged, and collected by respondent from each of the wholesale customers of respondent involved in this proceeding were voluntarily established by respondent.

10. Wide variations and unreasonable differences exist in the presently existing rates voluntarily established and maintained by respondent to each of the named wholesale customers here involved.

11. The lowest rate among all rates voluntarily made available by respondent to any of the communities or companies involved in this proceeding is the rate made available to the city of Fergus Falls, Minnesota.

12. The record is lacking in proof that substantial lawful circumstances exist justifying the differences presently existing in the rates charged by respondent to the different wholesale customers involved in this proceeding.

13. Although the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, and Ortonville, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company are wholesale customers within the same class or classification as the city of Fergus Falls, Minnesota, respondent (a) has failed without lawful justification to make electric energy available to any of them at the same rate or charge voluntarily established and made avail-

able to the city of Fergus Falls, Minnesota, (b) is unlawfully subjecting to undue prejudice and disadvantage the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, and Ortonville, Minnesota, the Roberts County Power Company and the Minnesota Utilities Company, and (c) is unlawfully granting undue preference and advantage to the city of Fergus Falls, Minnesota; and, such practices by respondent are unjust, unreasonable, unduly discriminatory and preferential, and unlawful, in violation of the provisions of the Federal Power Act.

14. Respondent, as long as it maintains the present difference in the rates demanded, charged, and collected of the wholesale customers involved in this proceeding, is maintaining unjust, unreasonable, and unlawful differences in rates and charges between the city of Fergus Falls, Minnesota, and the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, and Ortonville, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company, in violation of the provisions of the Federal Power Act.

15. The nondiscriminatory and relatively just and reasonable rate, as between members of a class who are served under the same or substantially similar conditions, is the lowest rate voluntarily maintained for any member of such class by respondent.

16. Respondent, as long as it continues the rate presently being made available to the city of Fergus Falls, Minnesota, should make the same rate available to the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, and Ortonville, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company.

17. Respondent, as long as it continues the rate presently being made available to the city of Fergus Falls, Minnesota, should cease and desist from demanding of, charging to, and collecting from the villages of Lake Park and Odessa, Minnesota, the cities of Barnesville, Breckenridge, and Ortonville, Minnesota, the Roberts County Power Company, and the Minnesota Utilities Company, its present rates to such communities and companies.

18. The Roberts County Power Company and Minnesota Utilities Company are not necessary parties to this proceeding.

An appropriate order will be entered in accordance with this opinion and findings.

DRAPER, Commissioner, concurring in part and dissenting in part: I agree with the majority that the rates now charged by the respondent to the wholesale customers involved are unduly discriminatory and preferential in violation of § 205(b) of the Federal Power Act, 16 USCA § 824d (b), but I do not concur in the order requiring the respondent to make the rates and charges contained in its rate schedule FPC No. 7 the legal rates for the other seven wholesale customers involved. I feel that the record discloses a grave question as to the lawfulness of the rates and charges contained in said rate schedule.

In my opinion, the respondent should be ordered to remove the existing undue discrimination and preference by filing with the Commission

a schedule of nondiscriminatory rates applicable to the eight wholesale customers here involved, which would be just and reasonable rates under the circumstances and conditions based upon its experience for the past few years, including the year 1939.

I am convinced that the Commission has ample authority under the act not only to forbid discrimination but to fix a just, fair, and reasonable rate to end such discrimination. I believe, however, that the record in this case does not support the finding as proposed, i. e., Fergus Falls rate is a reasonable rate to remove the discrimination.

I feel constrained to add that if, after hearing, a rate is found to be reasonable for the purpose of removing discrimination, I do not feel that the Commission need go into the reasonableness per se, of such a rate.

MANLY, Commissioner, dissenting: I am in accord with the majority of the Commission in finding that there is undue discrimination on the part of the Otter Tail Power Company in the rates charged for electric energy sold in interstate commerce to at least some of the several municipalities and other wholesale customers named in this proceeding. It is clearly the duty of this Commission to eliminate such discriminations and preferences as are shown to exist and there is no question in my mind that we possess the authority under the Federal Power Act to accomplish this end effectively and expeditiously.

There is also nothing novel or objectionable in holding that, where undue discrimination exists, a utility may be required to make available to all customers within the same general class, who are served under substantially the same conditions, the lowest schedule of rates and charges that has been lawfully established for that class of service. This is true whether such rate schedule has been voluntarily fixed by the utility or has been established against its will through proper proceedings by a regulatory Commission.

It seems to be clear also that the Commission in requiring a lawfully established rate to be made available for the purpose of removing discrimination, need not find that such base rate is just and reasonable per se. On all these points my views are in substantial accord with those of the majority.

But it is equally clear, in my opinion, that the rates and charges selected by the Commission as a base and required to be made available to other customers for the purpose of removing discrimination must in fact be a valid rate schedule, the terms and conditions of which are not confused with or influenced by ulterior material considerations, which are not properly part of such a rate schedule. It is necessary also that all the customers to whom such rate is made available shall be not only of the same general class but shall also be substantially similarly situated as regards the cost of rendering service.

These fundamental conditions, in my opinion, are not met in the order, approved by the majority of the Commission, requiring the Otter Tail Power Company to render service to five municipal distribution systems and two utilities at "the rates and charges contained in Otter Tail Power Com-

pany Rate Schedule F. P. C. No. 7 for the sale and delivery of electric energy to the city of Fergus Falls, Minnesota."

There is some reason to question whether this so-called "Rate Schedule F. P. C. No. 7," which is ordered substituted for the corresponding provisions in existing contracts, is a valid rate schedule within the meaning of the Federal Power Act and the rules and regulations of this Commission. It is in fact an agreement or contract between the Otter Tail Company and the city of Fergus Falls, signed in April 1935, not only fixing the terms and conditions for the sale of electric energy by the utility to the city's distribution system, but also covering the disposition of important contractual and property rights and obligations created under the terms of another contract, then existing, which had been in effect since 1912 and would have continued until 1937. These rights and obligations related to such matters as the city's water rights in the Otter Tail river on which the power company's generating station is located, the waiver of the right of the city under the preceding contract to acquire that plant, and the obligation of the power company to furnish water free to the city from its reservoir.

Whether or not these complex provisions were, as alleged by the power company, material considerations which did in fact influence the schedule of rates and charges for the sale of electric energy to the city, as set forth in par. 6 of the contract, there would seem to be no question but that they have no place in a valid electric rate schedule. They must inevitably becloud any determination of the justice and reasonableness of such rates and the practice of including such extraneous provisions in rate schedules or contracts has generally met with the condemnation of Commissions and courts.

It is not necessary to weigh the somewhat cloudy evidence in this case as to the materiality of these particular considerations at the time the present contract was signed or explore the ancient history of the relations between the city and the power company to determine how far they may have influenced the rates and charges for electric service. There are in the contract itself other clear-cut and material considerations which have a direct bearing upon rates and charges and substantially differentiate the business of supplying electric energy to Fergus Falls from the other municipalities and utilities here under consideration.

In the first place, under the contract (F. P. C. No. 7) the point of delivery of electric energy for the city of Fergus Falls is specified by § 2 as being "at the switchboard at the power house at the Wright dam of the power company in the city of Fergus Falls, Minnesota." This appears to bring the service rendered to Fergus Falls substantially within the terms of the definition, approved by this Commission, of "At Site Power," as set forth in the rate schedules of the Bonneville Project, at least to the extent of the energy supplied from generating stations located within 15 miles of the Fergus Falls delivery point. This definition classifies as "At Site Power" that which is delivered at the bus bars of the power plant or at points adjacent thereto and consumed within a radius of 15 miles.

Five hydro plants and one steam plant of the Otter Tail Power Company are located in Fergus Falls or its immediate vicinity and have a combined capacity and output greatly in excess of the requirements of the city. While the record does not disclose the exact extent to which Fergus Falls is supplied from these local sources, it would appear that the bulk of the energy is derived therefrom. It may be noted also that any deficiency that may arise from the inadequacy of these local plants would be supplied from the Wahpeton base load plant which is only about 20 miles from Fergus Falls and therefore comes approximately within the 15-mile radius of the "At Site" definition.

The Commission's witness Dunstan testified that all the other interstate wholesale customers involved in the present proceeding are served from the company's 40,000-volt transmission system, except Breckenridge, which is served by a short stub line from the Wahpeton plant.

This Commission, in approving the rates for the Bonneville project, has recognized the reasonableness of a differential in rates as between service "At Site" and service from the high tension transmission system. On this basis the Bonneville "At Site" rate for "prime power" is fixed at $14.50 per kilowatt year and the transmission line rate is fixed at $17.50. This is a differential of 20.7 per cent, clearly indicating the wide variation in rates which this Commission has formally recognized as applying to these two classes of service. It is not suggested that Fergus Falls, because of its location, is entitled to any such differential. The Otter Tail hydros are so small and variable in operation so that the hydro power generated is by no means "firm." It is urged merely that its location "At Site" is a factor which differentiates it from other customers, under the precedents recognized by this Commission.

In the second place, the so-called "rate schedule" in question (Fergus Falls—Otter Tail Contract—F. P. C. No. 7) provides in § 7 that in the event any taxes are levied "under the provisions of any law . . . by reason of, based upon or determined by the electricity sold by the power company to the city" the rates shall be increased in an amount equivalent to such taxes. This is a guaranty which no city could prudently have undertaken except as a material consideration affecting the level of rates. None of the contracts with other cities—Barnesville, Breckenridge, Lake Park, Odessa, and Ortonville—contains any such tax guaranty clause.

Finally in § 1 of the contract the city of Fergus Falls agrees to limit its sales to "public and private lighting and cooking, and for all domestic and municipal purposes, but for no other purposes." This reserves to the power company the exclusive right to serve commercial, industrial, and all other customers using energy for anything other than municipal purposes and domestic lighting and cooking. While there appears to be no evidence in the record to show how profitable this reserved business is, there is no doubt that the company would have let the city have it if they had not regarded this privilege as valuable. Equally important as affecting the matter of substantial similarity of conditions of service under the order, no

other municipality appears to have accepted such a restriction. On the contrary the city of Ortonville in § 10 of its contract specifically reserved to itself as a valuable consideration the exclusive right to serve not only Ortonville but also Big Stone City and the quarry district adjacent thereto.

In view of these considerations, which may have materially affected the rates set forth in the contract between the power company and the city of Fergus Falls, and because of the substantial differences between the conditions affecting electric service to that municipality and the other customers here involved, I cannot join in the order requiring that the so-called Fergus Falls rate schedule (F. P. C. No. 7) be substituted for the rates embodied in other existing contracts.

In addition to the difficulties above described, there are others which may be of an even more fundamental character. For example, the Fergus Falls rate appears to be related in some degree to the tax guaranty clause above described. If the somewhat indefinite language of the order requiring the substitution of this rate is interpreted as not including this tax clause, the Commission, in making this rate generally available, would certainly not be including all the terms and conditions of the contract which may have a direct and material bearing upon the cost of rendering service. If, on the other hand, it should be held that the order requires the other customers who receive the benefits of the Fergus Falls rate to accept the obligation of the tax guaranty, statutory as well as constitutional obstacles would at once arise.

By what authority could this Commission require a municipality or other political subdivision of a sovereign state to guarantee a utility against tax increases?

Finally, it is not certain that all the customers affected by this blanket order substituting the Fergus Falls rate for the rates in their existing contracts would be benefited by or would desire the change. The average charge for three of the four communities served by the Minnesota Utilities Company would be materially increased. Furthermore questions asked at the hearing by the representative of the city of Ortonville seemed to indicate doubt as to whether the Fergus Falls rate would be preferable to the existing Ortonville rate.

While increases as well as decreases of rates may be required to remove undue discriminations, certainly it is difficult to find that undue discriminations exist in such cases as Minnesota Utilities and Ortonville, where the differences in average charges relative to Fergus Falls are comparatively small (1.79 cents and 1.65 cents as against 1.54 cents respectively) and where such differences are the result of voluntary, arms'-length contracts and are reasonably related to the existing conditions of service.

These objections to the order requiring the substitution of the Fergus Falls rate for the rates now in effect for the other wholesale purchasers of interstate energy do not mean that the Commission is without authority to grant these municipalities and utilities prompt and effective relief. The Commission, upon its finding of undue discrimination in this case, clearly has the authority to require the Otter Tail Power Company to remove the discrimination by filing, subject to Com-

mission approval, just and reasonable rates for the communities and utilities discriminated against, together with such evidence as the Commission may require to determine whether such new rates meet the requirements of the Federal Power Act.

That is the course I believe should be pursued. Short-cut methods in rate regulation may be highly desirable, in order to save the government, the utilities, and the consumers, where possible, the expense and delay attendant upon involved rate cases. Nevertheless such methods cannot achieve their ends or escape shipwreck in the courts unless they are sound as regards both facts and procedure.

FEDERAL POWER COMMISSION

Re Northern States Power Company (Wisconsin)

[Opinion No 21-B, Project No. 108.]

Procedure, § 22 — Sufficiency of hearing — Accounting.

1. A power company cannot claim that it had no opportunity to be heard on the question whether it may be required to transfer from project to other accounts items disallowed in determining actual legitimate original cost of a federally licensed power project, where in previous hearings the issue presented was whether the items in question constituted actual legitimate original cost and on this issue the power company had a full hearing, p. 281.

Valuation, § 405 — Actual legitimate original cost — Binding effect of finding.

2. Actual legitimate original cost determinations under the Federal Power Act are binding upon licensees for all accounting purposes, as original cost is identical with actual legitimate original cost, p. 281.

Accounting, § 3 — Federal Commission powers — Transfer of items.

3. The Federal Power Commission has statutory authority to order a licensee to transfer items from one account to another in accordance with the Uniform System of Accounts, p. 282.

Valuation, § 67 — Actual legitimate original cost — Accounting.

4. Actual legitimate original cost of federally licensed power projects should be established as early as possible and subsequent changes in the fixed capital should be periodically determined, to the end that the power company's accounts be properly stated to reflect only such costs, p. 282.

Accounting, § 3 — Federal Commission powers — Validity of order.

5. An order of the Federal Power Commission requiring books of a federally licensed power company properly to reflect accounts is valid and within the scope of Commission authority although the order may not be immediately necessary for some of the purposes prescribed in the Federal Power Act, p. 282.

Accounting, § 3 — Federal authority — Conflicting jurisdiction.

6. The Federal Power Commission's order requiring a licensee to transfer certain items from one account to another is not invalid because it may conflict with accounting orders of a state Commission, since it cannot be assumed that either will arrive at different conclusions in respect of the accounting disposition of the items in question and thereby permit inflation of the licensee's capital accounts, p. 283.

Accounting, § 3 — Federal jurisdiction — State jurisdiction.

7. That the Federal Power Commission's system of accounts prescribed for licensees may not preclude accounting regulation by the states does not mean that any state regulation may be imposed to the exclusion of the Federal Commission's regulation, p. 283.

[May 7, 1940.]

REHEARING *of proceeding finding actual legitimate original cost of power project disallowing certain items and ordering their transfer from one account to another; order in accordance with opinion.*

By the COMMISSION: In two opinions (21 and 21-A), issued on August 11, 1936, and June 27, 1939, respectively, we considered and passed on the actual legitimate original cost of Project No. 108 of the Northern States Power Company (Wisconsin), hereinafter referred to as "licensee." On the latter date we issued an order in which we determined that the actual legitimate original cost of the project as of December 31, 1927, was $910,270.28, and disallowed items aggregating $208,526.72 claimed as part of such cost. We ordered, inter alia, that the items disallowed be transferred from the licensee's project accounts to the appropriate surplus or surplus reserves accounts, in accordance with the Uniform System of Accounts Prescribed for Public Utilities and Licensees, and that the licensee execute and submit FPC Form No. 76 showing compliance with the order.

In an application for rehearing, filed on August 7, 1939, the licensee intimated that it had been given no opportunity to be heard on the question whether the amounts disallowed as project costs should be transferred to surplus or surplus reserves accounts; alleged that in compliance with the provisions of the Uniform System of Accounts the licensee was engaged in ascertaining the original cost of all its electric properties, which include the cost of Project No. 108, and contended that the elimination of the disallowed items might result in an understatement of the original cost of the electric properties; and challenged our authority to direct such disposition of the disallowed items on the grounds, *first*, that our authority in respect of accounts was limited to certain specific purposes prescribed in the Federal Power Act, and there was no immediate need for effectuating the determination of the actual legitimate original cost for these purposes, and, second, that our order might conflict with the requirements of the Public Service Commission of Wisconsin with respect to the disposition of the dis-

allowed amounts in the licensee's accounts.

[1] (1) There is no merit in the complaint that licensee had no opportunity to be heard on the question whether it may be required to transfer disallowed items from project to other accounts. In the previous hearings, the issue presented was whether the items in question constituted actual legitimate original cost, and on this issue the licensee had a full hearing. Upon the determination that the items were not properly included in the project accounts, some disposition of these items had to be made. As a matter of accounting, it followed that since the items were not to be included in actual legitimate original cost of the licensed project and clearly were not cost of nonproject property, they should be charged to surplus or surplus reserves account.[1] Consequently, an additional hearing as to the accounting disposition of the disallowed items was entirely unnecessary. We granted a rehearing in this case [2] in order to set at rest the substantive legal questions presented.

[2] (2) The licensee does not contend that the items in question constitute actual legitimate original cost, but says that, in compliance with our Uniform System of Accounts, it is now engaged in ascertaining the original cost of all its electric properties which include Project No. 108, and that the elimination of the items disallowed may result in an understatement of original cost, contending that there is a difference between "actual legitimate original cost" and "original cost." This contention is without merit. The only cost for licensed projects recognized by the act is that determined in accordance with the ICC 1914 classification, in so far as applicable and except as limited by the act.[3] There is nothing in the ICC classification which makes a distinc-

[1] General Instruction 2, par. (F) of the Uniform System of Accounts Prescribed for Public Utilities and Licensees (effective January 1, 1937) provides:

"All charges to the accounts prescribed in this system for electric plant, income, operating revenues, and operating expenses shall be just and reasonable, and any payments by the utility in excess of just and reasonable charges shall be included in Account 538, Miscellaneous Income Deductions."

Since the disallowed items in connection with this particular project were incurred, or claimed to have been incurred, in prior years, such items are chargeable to Miscellaneous Debits to Surplus (Account 414) rather than to Miscellaneous Income Deductions (Account 538).

[2] After the rehearing and submission of briefs in this case, applications for rehearing were filed in other cases, raising substantially the same questions. Since there was no requirement or necessity for a rehearing on the accounting disposition of disallowed claimed costs, the applications for rehearing in the other cases were not acted upon, and by operation of § 313(a), were denied.

[3] Section 3(13), 16 USCA § 796(13) provides as follows:

" 'net investment' in a project means the actual legitimate original cost thereof as defined and interpreted in the 'classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission,' plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investments: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term 'cost' shall include, in so far as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by states, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall in so far as applicable be published and promulgated as a part of the rules and regulations of the Commission."

tion between "original cost" and "actual legitimate original cost"; the applicability of the rules and principles does not require or permit setting up a distinction in respect of the questions here involved; and there is nothing in the statutory limitations which would require or permit a distinction. Consequently "actual legitimate original cost" determinations are binding upon licensees for all accounting purposes, making "original cost" identical with "actual legitimate original cost." [4]

With this alleged distinction eliminated, the licensee, in effect, says that having been unsuccessful in capitalizing the items in one proceeding, it should be given a chance to do so at some later stage, if and when its compliance with the Uniform System of Accounts is questioned. Far from showing that the order in question is improper, this argument points to the opposite conclusion. Our order points the way toward full compliance with the requirements for the ascertainment of the original cost of the licensee's electric properties. The items in question do not constitute actual legitimate original cost, and it would be improper to include them as "original cost" of the licensee's electric properties, for that would result in inflation of the licensee's electric plant accounts.

[3] The real question in this case is whether upon the exclusion of these items from electric plant accounts, we have acted within the scope of our authority by requiring that the items be so recorded as to prevent inflation of the electric plant accounts. The licensee argues that although we may, under the statute, prescribe a Uniform System of Accounts, we do not have the authority to order the licensee to transfer items from one account to another in compliance with that system. Our determination of actual legitimate original cost of a project is not for mere academic interest, but to make our administration of the Federal Power Act effective. Congress gave us the power to prescribe a Uniform System of Accounts and to determine by order the accounts in which particular outlays should be entered (§ 301(a)), 16 USCA § 825, also to issue orders, rules, and regulations necessary or appropriate to carry out the provisions of the Federal Power Act (§ 309), 16 USCA § 825h. It is not necessary to dwell at length on the proposition that the order here involved comes within the terms of the statute.

[4, 5] (3) The licensee further contends that our authority in respect of determination of actual legitimate original cost is limited to specific purposes prescribed in the Federal Power Act, namely: (a) for the determination of amortization reserves to be set up under § 10(d) of the act; (b) for the ascertainment of the net investment of the licensee, in the event the United States should elect to take over

[4] Under the heading "Applicability of System of Accounts," in the preface of the Uniform System of Accounts, it is provided:

"In accordance with requirements of § 3 of the act, the classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission,' is published and promulgated as a part of the accounting rules and regulations of the Commission, and a copy thereof is appended hereto as Appendix II. *Irrespective of any rules and regulations contained in this system of accounts, the cost of original projects licensed under the act, and also the cost of additions thereto and betterments thereof, shall be determined under the rules and principles as defined and interpreted in said classification of the Interstate Commerce Commission so far as applicable.*" (Italics supplied.)

the project under § 14; and (c) for the determination of just and fair compensation for the use of the project, in the event that the operation thereof is taken over by the United States under § 16. The licensee then argues that there is no immediate necessity for fixing the amount of actual legitimate original cost for the first purpose until 1943; for the second purpose until 1971; and for the third purpose until the President has expressed his opinion that the operation of the project should be taken over.

Had our authority in this respect been limited to these three purposes, there would still be no merit to the contention that the order in question is premature. In the administration of the Federal Power Act, it is important that the actual legitimate original cost of projects be established as early as possible and that subsequent changes in the fixed capital be periodically determined, to the end that the accounts be properly stated to reflect only such costs. Time has a way of eradicating facts which are more easily ascertained when they occur. If the books of the licensee do not properly reflect the ascertained actual legitimate original cost, and they are permitted to remain in such state for a long period of time, the difficulties of making the proper adjustments will be greatly augmented. Alabama Power Co. v. McNinch (1937) 68 App DC 132, 21 PUR(NS) 225, 94 F(2d) 601, 606; Clarion River Power Co. v. Smith, 61 App DC 186, PUR1932E 149, 59 F(2d) 861, 863; affirming 59 Wash LR 106, PUR1931B 262.

But the purposes mentioned by the licensee are not the only purposes for which we are required to ascertain the actual legitimate original cost of projects and to require that the books of the licensee properly reflect the accounts. In the determination of what would constitute a reasonable rate of return upon the net investment (§ 10 (d)), in the determination of what would constitute excessive profits (§ 10(e)), in the determination of reasonable rates for electric energy transmitted in interstate commerce (§ 20), in the requirement of annual, periodic, or special reports (§ 304 (a)), and in the exercise of our investigatory and rule-making powers (§§ 307, 309, and 311), it is highly important that we have information based upon the Uniform System of Accounts and that the books of the licensees properly reflect such accounts. It is, therefore, no argument to say that our order requiring that this licensee's books properly reflect the accounts is invalid, because the licensee does not deem the order to be immediately necessary for some of the purposes prescribed in the act.

[6, 7] (4) Finally, the licensee contends that the order is without authority because it may conflict with accounting orders which may be issued by the Public Service Commission of Wisconsin. We cannot assume that the state Commission will arrive at different conclusions in respect of the accounting disposition of the items in question, and thereby permit inflation of the licensee's capital accounts.[5] However, even if the state Commis-

[5] After the rehearing in this case, the Wisconsin Commission, in an opinion delivered by it, considered the original cost of this project. In a spirit of coöperation, and to avoid unnecessary conflict, the Commission said:

"The request to classify the $1,238,337.56,

sion took a different view of these matters, that would not render our order invalid, nor, on the other hand, would the licensee be rendered unable to comply with the orders of the Public Service Commission of Wisconsin. While our System of Accounts prescribed for licensees may not preclude accounting regulation by the states, it does not mean that any state regulation may be imposed to the exclusion of our own.

Nor is there any basis for this argument in the fact that the licensee is a "public utility" within the meaning of the Federal Power Act. True, § 301(a), *supra,* which authorizes us to prescribe a system of accounts for licensees and public utilities also provides that "nothing in this act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any state." But this only means that under the Federal Power Act the licensee does not, by virtue of being subject to our regulation, become immune from accounting regulation by the state Commission. If that Commission requires the licensee to set up additional accounts as part of the project cost within the meaning of the state law, there is no reason why the licensee may not comply with that order and, at the same time, however, comply with the order herein issued.

For the above reasons, the relief sought in the application for rehearing must be denied. An order will be entered accordingly.

Order Supplemental to Order of June 27, 1939, Directing Compliance in Conformity Therewith

Upon reconsideration of the order entered herein on June 27, 1939, determining the actual legitimate original cost of Project No. 108 as of December 31, 1927, to be $910,270.28, disallowing additional claims aggregating $208,526.72, and requiring the Northern States Power Company (Wisconsin) to establish accounts accordingly, to transfer the disallowed items from its project accounts to the surplus or surplus reserves accounts, and to execute and submit FPC Form No. 76 showing compliance with said order; upon consideration of the licensee's application for rehearing, the evidence adduced and arguments submitted; the Commission, for the reasons stated in its Opinion No. 21–B, filed this day, *orders* that:

The order of June 27, 1939, be and it is hereby reaffirmed, except that the date for the execution and submission of FPC Form No. 76 is hereby extended to June 29, 1940.

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representing the book cost of the Chippewa reservoir as utility plant leased to others appears reasonable. The original cost of this reservoir is being considered by the Federal Power Commission; pending its final decision, we see no objection to retention of the book cost in the accounts. This should not be construed as approval of that book cost or any indication on our part that it represents the original cost of the plant. Since the Federal Power Commission is investigating that matter, our staff has made no analysis of the Chippewa reservoir accounts and there is nothing in this proceeding concerning its original cost."

(In the Matter of the Requirements with Respect to Accounting for Units of Property and Their Installed Costs by Accounting Areas of the Northern States Power Company, Docket No. 2-U-920, decided March 30, 1940).

SECURITIES AND EXCHANGE COMMISSION

Re United Gas Improvement Company et al.

[File No. 59-6, Release No. 2065.]

Intercorporate relations, § 19.8 — Integration of holding company system — Notice of Commission hearing.

1. Adequate notice of a Commission hearing as the basis for a Commission order to limit operations of a holding company system to a single integrated public utility system, pursuant to § 11(b)(1) of the Holding Company Act, 15 USCA § 79k, is notice which fairly advises the parties at some appropriate time of the tentative views of the Commission; and opportunity for hearing represents opportunity to present evidence and to be heard upon the issues in the proceeding, p. 285.

Intercorporate relations, § 19.8 — Holding company integration proceeding — Notice of hearing — Statement of Commission views.

2. Supplemental notice informing companies in a holding company system as to what action the Commission tentatively believes compliance with § 11 (b)(1) of the Holding Company Act (integration section) requires, may properly be given a full opportunity to introduce evidence and to be heard on those tentative views may properly be granted, in order to expedite proceedings instituted by Commission order under § 11(b) (1), even though the original notice (omitting such tentative views) was adequate, where no person could be injured by such statement of Commission views, p. 285.

[May 23, 1940.]

NOTICE *of and order for hearing pursuant to § 11(b)(1) of the Public Utility Holding Company Act of 1935 instituting integration proceedings; request for supplemental notice containing tentative Commission views granted and hearing postponed.*

By the COMMISSION: **[1, 2]** On March 4, 1940, the Commission directed a notice of and order for hearing pursuant to § 11(b) (1) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k, to the United Gas Improvement Company, a registered holding company, and its subsidiary companies, as respondents. This order recited that the Commission had examined "the corporate structure of the United Gas Improvement Company, a registered holding company, and its subsidiary companies, the relationships among the companies in the holding company system of said the United Gas Improvement Company, the character of the interests thereof and the properties owned or controlled thereby." This recital was followed by a number of allegations relating to the identity of the respondents, their relationships, the types of business in which they

engaged, and the places in which each respondent conducted its business. The order further stated that from such examination it appeared to the Commission that "the holding company system of said the United Gas Improvement Company is not confined in its operations to those of a single integrated public utility system within the meaning of the act, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system." [1] Following this, the order directed the respondents to file on or before April 12, 1940, "their joint or several answers admitting, denying, or otherwise explaining their respective positions" with respect to the allegations referred to above.

In the same order, the Commission directed that a hearing be held to determine (1) such issues, if any, as might arise from the allegations contained in the Notice and Order and the answers filed thereto by any of the respondents or by any other party to the proceeding; (2) what action, if any, is necessary and shall be required to be taken by the respondents, or any of them, to limit the operations of the holding company systems of each of the registered holding companies named in the order to a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system; (3) upon appropriate application, the extent to which each of the registered holding companies named in the order shall be permitted to continue to control one or more additional integrated public utility systems as provided by Clauses (A), (B), and (C) of § 11(b) (1) of the act; and (4) upon appropriate application, the extent to which any of the respondents will be permitted to retain any interest in any business (other than that of a public utility company as such) as provided by § 11 (b) (1) of the act.

On April 12, 1940, the United Gas Improvement Company, and various of its subsidiary companies, as respondents, filed an answer to the aforementioned order reciting, among other things, that it had not been advised that the Securities and Exchange Commission had made any "determinations" or "contemplated determinations" under § 11(a) with respect to its system; that there can be no proper hearing pursuant to § 11(b) (1) until following the receipt of advice by it from the Commission as to what "action" the Commission proposes to direct; and that the Commission's recitals and allegations to the effect that the system's operations are not confined to a single integrated public utility system did not constitute the notice contemplated by the act because they merely stated conclusions in the negative, failed to specify which part, if any, of its system lies outside the "single integrated system," and failed to specify which business, if any, was not incidental, or necessary to the operations of such system. The Commission heard oral argument from counsel for the respondent upon the foregoing matters.

Sections 11(a) and 11(b)(1) of

[1] Obviously, these recitals were purely tentative. They were so understood by U.G.I., according to the statement of its counsel.

the Public Utility Holding Company Act of 1935 provide:

"(a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public utility system.

"(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

"(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding company system of which such company is a part to a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system: Provided, however, that the Commission shall permit a registered holding company to continue to control one or more additional integrated public utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

"(B) All of such additional systems are located in one state, or in adjoining states, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public utility systems the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

Plainly no order can be entered under § 11(b) (1) until adequate notice has been given and opportunity for a full hearing has been afforded. Adequate notice, in our view, is notice which fairly advises the parties, at some appropriate time, of the tentative views of the Commission. "Opportunity for hearing" represents, in our opinion, opportunity to present evidence and to be heard upon the issues in the proceeding.

We consider the notice already given as adequate at this stage of the proceeding. Nevertheless, since the respondents have requested a recitation of the Commission's tentative conclusions, together with a full description of "such action as the Commission has tentatively concluded to be necessary under the provisions of § 11 (b) (1)," at the outset of the proceeding, and since no person could be injured by such statement, we are willing to enlarge our original notice. Expedition is in the interest of all parties concerned, and we are inclined to agree with the respondent that the issuance of the supplemental notice at this time will probably expedite the conduct of this proceeding. The respondents will, therefore, be informed as to what action we tentatively believe compliance with § 11(b) (1) requires, and will be given a full opportunity to introduce evidence and to be heard on those tentative views.

In order that the respondents may have sufficient time to prepare for the hearing on the basis of the more specific statement which will shortly be issued, the hearing scheduled for June 3, 1940, will be postponed until further order by the Commission.

Commissioner Healy takes the view that the Commission at this stage should not go beyond issuing a tentative designation or description of the integrated systems of the respondents. He reserves the right to state his views at greater length when the Commission issues the supplementary notice or report mentioned in the majority opinion.

Editor's Note—Similar action was taken in Re Commonwealth & Southern Corp. (SEC) File No. 59–8, Release No. 2083, June 1, 1940; Re Engineers Pub. Service Co. (SEC) File No. 59–4, Release No. 2084, June 1, 1940.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Haverhill Gas Light Company

[D. P. U. 5956.]

Rates, § 276 — Kinds — Straight rate.

1. A straight rate, or so-called "flat rate," based only upon consumption is obsolete under accepted modern rate practice as it has the disadvantage of failing to provide an incentive to larger individual customer use and it constitutes an actual discrimination in favor of the occasional or convenience user, while it also necessitates a large and disproportionate expense in billing and bookkeeping accounts, owing to the substantial number of customers whose monthly consumption is merely nominal, p. 290.

Rates, § 259 — Kinds — Promotional type.

2. Gas rates based on consumption only should be superseded by schedules of modern promotional-type rates under which the company would be enabled to increase its gross business, p. 293.

Rates, § 286 — Kinds — Initial charge — Gas.

3. A promotional type gas rate schedule should contain a charge for a minimum quantity of gas sold which will closely approximate the amount which the company is required to spend to cover the expense of serving the average customer, p. 293.

Return, § 24 — Reasonableness — Service maintenance — Ability to borrow money.

4. An existing company serving a large community should not be so handicapped in the matter of the amount of return permitted upon its investment that it is able to borrow money necessary for plant extensions and replacements only with great difficulty and at excessive interest rates, p. 294.

Rates, § 257 — Kinds — Changes.

5. Promotional rate schedules superseding obsolete consumption rate schedules, in order to augment gross revenues of a gas company, should be so prepared as to avoid sudden and drastic changes in the form and structure of rates, p. 294.

Rates, § 374 — Gas — Initial charge.

6. A charge of 75 cents for the first block of 200 feet of monthly gas use was considered more reasonable than a $1 charge, upon a change from a straight consumption rate to a promotional type of rate, p. 296.

Rates, § 373 — Gas — Convenience customer — Small user.

Statement that the convenience customer of the average modern gas company is not necessarily a person of small means and usually is otherwise, that he is commonly to be found among the dwellers in apartments, in the medical and dental professions and in small commercial establishments where gas is used in minimum quantities for limited purposes or only periodically, p. 293.

[May 28, 1940.]

INVESTIGATION *of increased rates and charges filed by gas company; schedules disapproved and disallowed and new tariffs promulgated by Department.*

APPEARANCES: Peter J. Rempe, for the Haverhill Gas Light Company; Mayor Albert W. Glynn, for the city of Haverhill; Representative Colin J. Cameron, for the towns of Amesbury, Merrimac, and Salisbury.

GRANT, Commissioner: The schedules of proposed rates and charges for gas herein considered were filed with the Department by the Haverhill Gas Light Company on December 15, 1939, the same to become effective on January 1, 1940. The effect of said schedules, if allowed, would be to increase the net earnings of the company by approximately $30,000. The respondent represents that this increase has become necessary by reason of progressively larger expenditures incident to the cost of doing business in recent years and by substantial concurrent losses in the revenues received by the company from its domestic customers.

Subsequent to the filing of these schedules the Department entered up-

on an investigation upon its own motion as to the propriety of the rates and charges embodied therein and a public hearing was held on January 16, 1940, at which the mayor of the city of Haverhill appeared and opposed any increase in rates. Since that time the operation of the schedules has been suspended to give the Department an opportunity to pursue its investigation, the last suspension voted being to June 1, 1940.

[1] The Haverhill Gas Light Company is one of the few gas companies doing business within the commonwealth which continues to sell its product largely upon the basis of a so-called "flat rate," the charge presently in effect to household customers in Haverhill being $1.25 for each 1,000 cubic feet of gas sold and delivered up to 10,000 feet. This type of rate was once in general use among gas utilities but is considered obsolete under accepted modern rate practice. It has the obvious disadvantage of failing to provide an incentive to larger individual customer use and it constitutes an actual discrimination in favor of the occasional or "convenience" user. Another weakness of the flat rate is that it necessitates a large and disproportionate expense in billing and bookkeeping accounts due to the substantial number of customers involved whose monthly consumption is merely nominal.

The rates sought to be approved in this proceeding are promotional in character, beginning with a block of 200 cubic feet or less for which the monthly charge to the customer would be $1. Customers living in the city of Haverhill would pay 11 cents per hundred cubic feet for the next additional 800 cubic feet of gas consumed, 9 cents per hundred cubic feet for the next 4,000 cubic feet per month, 7 cents for the next 495,000 cubic feet, and 6.5 cents per hundred cubic feet for all gas consumed in excess of 500,000 cubic feet per month, the two latter steps being subject to a fuel adjustment clause depending upon possible fluctuations in the retail price of fuel oil.

The rates for customers in the towns of Merrimac and Groveland would be the same under the company's filed schedules for the first block of 200 cubic feet of monthly use, but slightly higher for gas sold in the several blocks exceeding that amount. In the town of Amesbury there would be a similar differential to provide for the higher costs of serving that territory.

Two years ago the Haverhill Gas Light Company unsuccessfully sought the Department's approval of tariffs which would have effected an increase in the amount of its net revenues of approximately $25,000. In disposing of the matter at that time the Department, in an order issued January 31, 1939 (D. P. U. 5688), 27 PUR(NS) 129, 133, qualified its refusal to allow the proposed rates to take effect by stating, in the concluding paragraph of the majority opinion:

"If conditions fail to improve it may be necessary to readjust the rates of the company to secure a more adequate return, and conditions may also arise which will warrant a substantial departure in the form of rates now in effect."

In connection therewith the company recites that, although general business conditions in the Haverhill area have shown some improvement since the promulgation of the order in

the last case, the gross revenues of the company have declined during the intervening period and commodity prices have shown a steady upward trend. It is further recited that unless something can be done to augment the gross revenues of the company, it will be severely handicapped in future expansion of its facilities and making needed replacements, the net effect of which will be deterioration in the quality of the service.

The respondent company supplies gas to retail customers in Haverhill, Merrimac, Groveland, Amesbury, and Salisbury. It has wholesale contracts for the sale of gas with local companies serving Newburyport, Georgetown, Rowley, Ipswich, Essex, Manchester, Hamilton, Wenham, and Topsfield, all of which municipalities are within the commonwealth; and with a company serving Hampton, Seabrook, and Exeter, New Hampshire. It is apparent, from analysis of the company's retail sales territory, that there is little likelihood of substantial future increases in the number of its customers; in fact all of the evidence tends to support the premise that it will continue to lose customers in direct proportion to the availability of cheaper competitive fuels, principally range and furnace oil.

The immediate need, therefore, in order to maintain the financial stability of the company in such a condition as to assure a continuity of the kind of service to which its customers are accustomed, is to establish tariffs which will promote larger individual consumption of gas by the average retail customer by offering progressive reductions in prices as larger amounts are used, and which effectively will reduce the amount of present losses resulting from the sale of gas to customers whose monthly bills are so small that they do not pay their way.

It is obvious that a continuation of the recent downward trend in the amount of the company's annual net revenues will, within a few years, reduce its earnings to the vanishing point. In the year 1930 the company's net earnings were $133,800. For the twelve months ended November 30, 1939, they had fallen to $47,400 and if it had not been for an abatement in local taxes, amounting to $8,400, the figure would have been $39,000. There is pending also an appeal from a state franchise tax bill amounting to $9,500, not included in the 1939 figures, which might still further reduce the net.

The company's gross revenues for the year 1930 were $733,300. This figure was reduced sharply over the five years next following but appears to have leveled off somewhat since 1935. At the present time gross revenues are almost $180,000 less than they were a decade ago. Concurrently the company's expenses have shown a decrease of only $90,000 for the ten years and interest charges have been reduced only $5,000. On the other hand, the amounts required to be paid by the company in taxes increased by more than $9,000 per annum from 1930 to 1938 and would have been more in 1939 except for the reasonable attitude of the Haverhill assessors.

The Haverhill Gas Light Company has pursued a conservative management policy for many years. Its expenses for executive payroll and su-

perintendence are comparatively small, as its affairs are directed under a contract with the Stone & Webster utility management organization. During the two years next preceding the filing of the tariffs here considered the respondent company had combined net earnings available for dividends amounting approximately to $95,000, but paid out only $78,624 to shareholders, or 3.2 per cent yearly upon the par value of its stock, leaving the remaining $16,000 in the surplus account.

During the twelve months ending November 30, 1939, the company sold 573,879,000 cubic feet of gas to all customers, receiving a total revenue therefrom of $545,982. This represented an average revenue per thousand cubic feet of gas sold of 95 cents and compares with an average revenue per thousand cubic feet of $1.13 in 1930 when 633,125,000 cubic feet of gas were sold and the total revenue received was $717,251. The significance of this reduction appears by comparison with the company's estimate of $1.05 as the actual cost of serving the average customer and its representation at the hearing that approximately 35 per cent of all of its customers pay less than $1 in the amount of their monthly bills.

The decline in revenues is further emphasized by the fact that during the same 10-year period ending November 30, 1939, the number of customers' meters decreased from 16,028 to 15,058, a reduction of more than 6 per cent. In the meantime the company largely has increased its sales to a limited number of large-use customers. During the twelve months ended November 30, 1939, it sold a total of 160,264,000 cubic feet of gas for space heating or about 27.9 per cent of its total output, and 121,610,000 cubic feet to other companies under its wholesale contracts, or 21.2 per cent of its output. There appears to be no question that both of these markets are wholly competitive and the extent of their importance is indicated by the following table of figures taken from the company's Exhibit No. 2, filed with the Department at the public hearing:

Gas Sales (M cu. ft.)

	1930	%	12 months ended Nov. 30, 1939	%
Residential	319,756	50.5	236,225	41.2
Commercial and Industrial	75,535	11.9	55,780	9.7
Space Heating	149,859*	23.7	160,264	27.9
Other Companies	87,975	13.9	121,610	21.2
Total sales	633,125		573,879	

*The 1930 sales do not segregate ordinary residential sales for cooking, water heating, etc., for this type customer. It is estimated that approximately 10% of these sales should be included under residential in comparing the figure with 1939 sales.

Exhibit No. 4, submitted by the company, shows clearly that the return to the stockholders upon their investment has diminished in large pro-

portion since 1930, irrespective of the manner in which is it computed:

Per Cent Return on Investment

Investment Basis	1930	1933	1935	1937	1938	12 Months Ending Nov. 1939
	%	%	%	%	%	%
A. Par Value of Stock	10.89	7.82	4.55	3.71	3.79	3.86
B. Par Value of Stock Plus Premium on Stock	8.99	6.45	3.75	3.06	3.12	3.18
C. Par Value of Stock Plus Premium on Stock plus Surplus	6.49	4.66	2.73	2.23	2.27	2.34
D. Average Book Value of Plant	5.83	4.06	2.32	1.88	1.92	1.96
E. Average Book Value of Plant less Retirement Reserve	6.73	4.88	2.87	2.37	2.42	2.51

As may be seen from this table, the return upon par value of the company's stock, without considering the amount of the premiums, is less than 4 per cent, and upon the average book value of plant it is less than 2 per cent.

We are cognizant of the fact that the city of Haverhill, which comprises the bulk of the company's retail sales territory, having 12,098 customers to 1,153 for Amesbury, 870 for Salisbury and Salisbury Beach, 447 for Merrimac, and 424 for Groveland, is an industrial community where the effects of the economic depression have been manifest by widespread unemployment and large per capita relief expenditures. It does not appear, however, that welfare recipients, as a class, are customers of the gas company, most of them being users of fuel oil for cooking and heating purposes. There was testimony at the hearing by representatives of the company that the city of Haverhill annually distributes free of charge to those upon the relief rolls fuel oil to the value of approximately $47,000. In this connection it was suggested that, during the summer months, when the company's load is lightest, it could supply gas to persons on welfare for cooking purposes only at a price below the recent average price of oil. A survey conducted by the company among its small customers selected at random showed that 78 per cent of those purchasing gas were gainfully employed and an additional 12 per cent appeared also to be employed but in occupational pursuits which the investigators were unable to ascertain.

The results of this canvass would seem to add weight to the contention that the "convenience" customer of the average modern gas company is not necessarily a person of small means and usually is otherwise. He is commonly to be found among the dwellers in apartments, in the medical and dental professions, and in small commercial establishments where gas is used in minimum quantities for limited purposes or only periodically.

[2, 3] In view of what has been said concerning the obsolete character of the company's present rate schedule and the difficulties that have arisen among gas utilities generally through losses in customers due to competition from other fuels, we are of opinion that the tariffs on file with the Department should be superseded by schedules of modern, promotional-type rates under which the company would be enabled to increase its gross business by an amount approximating that herein contemplated. This means

that there should be a charge for a minimum quantity of gas sold which will more closely approximate the amount which the company is required to spend to cover the expense of serving the average customer. To require the respondent to continue to do business upon a basis which deprives it of the opportunity to meet increased costs in a very large proportion of its business will result disastrously, not only to the stockholders of the company but to the people of Haverhill, Amesbury, Merrimac, Groveland, and Salisbury.

[4] Under existent conditions it is difficult to conceive of the raising of capital by stock subscriptions for the purpose of establishing a new gas utility. We have before us several recent instances in which gas companies have been forced by unprofitable operations to go out of business. It is highly important, therefore, that an existing company, serving a large community, be not so handicapped in the matter of the amount of return permitted upon its investment that it is able to borrow money necessary for plant extensions and replacements only with great difficulty and at excessive interest rates. It is not an easy matter to say in such distressing times as the present what constitutes a fair return to a gas company. There is danger also that if rates are increased in order to permit such a company to earn a more equitable return upon the amount of its stock or upon plant investment, the competitive level fixed by the price of fuel oil, or in the case of customers with larger incomes, the convenience of electric cooking, may cause large further losses in the number of its customers and more adversely affect the fortunes of the company than before such an increase took place.

We think that where the number of customers of a company appears to be diminishing or to have become static there are only two ways in which it may be assisted in rehabilitating its revenues by the prescription of rates. The first is to prescribe a rate which will make it worth while for the individual customer to use more gas at lower average prices and the second is to eliminate, as far as possible, the necessity for sending out thousands of monthly bills for trivial amounts which are insufficient to pay the out-of-pocket cost of maintaining meters and supplementary services upon the customers' premises.

[5] In reaching the conclusion that the Haverhill Gas Light Company is entitled under present circumstances to earn a larger return upon its investment, we do not concur in the company's opinion that the schedules of tariffs filed with the Department are calculated best to achieve the desired result. Accordingly we have prepared schedules of rates and prices which substantially will augment the gross revenues of the company and at the same time avoid sudden and drastic changes in the form and structure of rates.

We have in mind that, even if the increase of $29,683 estimated to result if the respondent's schedules should be approved as filed, the net additional income available for distribution to the stockholders in dividends would be inconsiderable due to various necessary deductions arising from increased charges for labor, fuel, and taxes. The company intends

to apply $5,000 of the increase in revenue to a continuation of its wage adjustment policy, the purpose of which is to improve the level of compensation received by its employees. The respondent estimates that rising fuel costs will amount to $9,933, due largely to sharp recent increases in the price of oil. It further anticipates that the proposed increase in rates will result in the loss of some of its customers, estimating the number at approximately 800 and the revenue loss therefrom at $4,800, based upon an average annual bill per customer of $6. These three items, which total $19,733, and an increase in the amount of the company's Federal income tax amounting to $1,960, when subtracted from the anticipated increase in gross revenues of $29,683, would leave only $7,990 as the actual amount to be applied beneficially to the interests of the stockholders.

Ordinarily when there is a general increase in fuel costs a gas company which, in whole or in part, manufactures gas directly from coal is able to offset a rise in coal prices by a co-extensive price increase in the retail coke market that enables it to dispose of this by-product upon more favorable terms. No such accruing credit is available to the Haverhill Gas Light Company, however, as it manufactures all of its product by the so-called "water-gas" method of generation. In addition, recent improvements in the art of extracting synthetic gas products from petroleum, such as propane sold by weight in containers, have raised a new and serious competitior for the business of the commercial gas user which, being unrestricted as to prices by public authority, makes it increasingly difficult for a utility to sell gas at rates that are compensatory.

The cost to the company of fuel oil has increased largely during the past year, while its prices for coal and coke have shown little material change. In 1935, for example, the average cost per ton of coal for boiler fuel to this company was $5.90. During the twelve months ending November 30, 1939, it averaged $5.82 and the current price, quoted by the respondent at the public hearing in January, 1940, was $6.10. In 1935 the average cost per ton of coke for generator fuel was $7.87; the average for 1939 was $8.05 and the quoted current price as of January, 1940, was $8.40. On the other hand the average cost per barrel of fuel oil in 1935 was: for gas oil, $2.06; for residuum oil, $1.61. During 1939 the average cost per barrel of gas oil had dropped to $1.97. For residuum oil it was $1.62 and for "Bunker C" oil, which was not used in gas manufacture by the Haverhill Company in 1935 but latterly has been adopted as a substitute for gas oil, the price was $1.39. Current prices for these three grades were quoted by the respondent at the hearing as $2.42 for gas oil, $2.04 for residuum oil and $1.41 for "Bunker C." Moreover, under the company's oil contract, the price of "Bunker C" oil was to be advanced to $1.51 per barrel, effective February 1, 1940, and to $1.61 as of June 1, 1940.

In view of the foregoing and the uncertainty involved in predicting commodity futures we are of opinion that the amount of the proposed increase in the price of gas is not unreasonable. The only question relates to the method of its allocation, which, in the

schedules to be promulgated by the Department, provides, in our opinion, a more equitable distribution of the costs of service than in the tariffs proposed by the company.

[6] The rates of which the company herein seeks approval embody a charge of $1 for the first 200 cubic feet of gas per month delivered and sold in Haverhill. Compared with the present monthly bill of 25 cents for the same quantity, assessed at the flat rate of $1.25 per thousand cubic feet, this constitutes so sharp an upward revision that inevitably it would foster an unfriendly attitude toward the company upon the part of a large number of customers and conceivably might result in the loss of a number of present gas users even larger than the 800 which the company anticipates. It appears to us that a charge of 75 cents for the first block of 200 feet of monthly use would be more reasonable, necessitating increases in the subsequent blocks above the rates sought by the respondent in order to produce approximately the amount of revenue desired. In adopting this view of the situation we are moved to look upon the substituted rate schedules not entirely as an increase in prices but more in the light of a fairer distribution of charges allocable to the expense of servicing the average customer.

As hereinbefore set forth the company's retail service area is divided into four districts, namely: Haverhill, Merrimac-Groveland, Amesbury, and Salisbury. With the exception of Groveland, each of the four districts is served from a high-pressure pipe line extending from Haverhill through each of the other communities in the order named. Groveland, being contiguous to Haverhill, is served from the Haverhill low-pressure system and from a distribution standpoint is comparable to Merrimac. For these reasons it is grouped with Merrimac in zoning the necessary differential applicable to rates charged in the communities beyond the Haverhill area.

No changes are contemplated in the Salisbury district in the rates presently in effect. Salisbury already has four rates which are of a promotional character and there is a situation in that district which does not obtain in the others, namely; the seasonal variation in the number of customers and the nature of the demand caused by the influx and departure of a large number of summer residents.

In modifying the plan represented by tariffs M. D. P. U. Nos. 16, 17, and 18, filed by the company, we have exercised our judgment in a manner designed to place the effect of the increase more upon the customers who use gas in moderate quantities, rather than to place it mainly in the charge for the first block of monthly use, and also to provide the differentials required to produce revenue increments which will more equitably compensate the company for serving the more distant areas. These changes will, we think, accomplish this purpose, will secure to the respondent an increase in revenue of approximately $27,000 per year and will supply the promotional type of rate so strongly urged by the company.

Concurring Commissioners: Cotton, Chairman, Curley, McKeown, and Whouley.

Accordingly, after notice, a public hearing, and consideration, it is

Ordered, that the tariffs filed by the Haverhill Gas Light Company on December 15, 1939, to become effective on January 1, 1940, known as M. D. P. U. Nos. 16, 17, and 18, the operation of which schedules was suspended by the Department until June 1, 1940, be and hereby are disapproved and disallowed, and it is

Further ordered, that Space Heating Rate for Haverhill, M. D. P.U. No. 12 and the rates for general service contained in schedule filed August 12, 1922, containing rates available to customers in Haverhill, be and hereby are canceled and that a new tariff be filed in place thereof to become effective June 1, 1940, said tariff to contain the following rates applicable for general purposes to customers in the city of Haverhill:

First	200 cu. ft. or less per month	$ .75.	
Next	800 cu. ft. per mo.	$ .13	per 100 cu. ft.
Next	4,000 " " " "	.10	" " " "
Next	495,000 " " " "	.07	" " " "
Over	500,000 " " " "	.065	" " " "

Minimum bill $7 per annum provided customers' bills during any consecutive 12-months' period total less than that amount; and it is

Further ordered, that Space Heating Rate for Merrimac and Groveland, M. D. P. U. No. 15 and the rates for General Service, filed with the Department August 12, 1922, containing rates available to customers in Merrimac and Groveland be and hereby are canceled and that a new tariff be filed in place thereof to become effective June 1, 1940; said tariff to contain the following rates applicable for general purposes to customers in Merrimac and Groveland:

First	200 cu. ft. or less per month	$ .90.	
Next	800 cu. ft. per mo.	$ .14	per 100 cu. ft.
Next	4,000 " " " "	.11	" " " "
Next	495,000 " " " "	.075	" " " "
Over	500,000 " " " "	.07	" " " "

Minimum bill $7 per annum provided customers' bills during any consecutive 12-months' period total less than that amount; and it is

Further ordered, that Space Heating rate for Amesbury, M. D. P. U. No. 13, General Service Rate M.D. P. U. No. 51 and Optional Rate for Amesbury, M. D. P. U. No. 60 be and hereby are canceled and that a new tariff be filed in place thereof to become effective June 1, 1940; said tariff to contain the following rates for general purposes applicable to customers in the town of Amesbury:

First	200 cu. ft. or less per month	$1.00.	
Next	800 cu. ft. per mo.	$ .15	per 100 cu. ft.
Next	4,000 " " " "	.12	" " " "
Next	495,000 " " " "	.075	" " " "
Over	500,000 " " " "	.07	" " " "

Minimum bill $7 per annum provided customers' bills during any consecutive 12-months' period total less than that amount; and it is

Further ordered, that the above tariffs, as herein ordered to be filed, may contain a fuel adjustment clause to be applied to gas used in excess of 5,000 cubic feet per month for space heating, commercial, and industrial use, which clause may provide for an increase or decrease of 2 cents per thousand cubic feet for each one-half cent increase or decrease in the price of 32–36 gravity fuel oil above or below 11.5 cents per gallon in Haverhill.

CALIFORNIA RAILROAD COMMISSION

Kilpatrick's San Francisco Bakery

v.

Pacific Gas & Electric Company

[Decision No. 32920, Case No. 4475.]

Discrimination, § 109 — Rates — Surplus gas.

Differences in surplus gas rates assessed are not necessarily unreasonable although the classification of consumers in the company's schedule may result in a preference to those listed, and discrimination against those not included.

[March 19, 1940.]

COMPLAINT *alleging unreasonable discrimination resulting from application of surplus gas schedule; dismissed.*

APPEARANCES: T. A. Hunter, for the complainant; R. W. DuVal, for defendant Pacific Gas and Electric Company.

WAKEFIELD, Commissioner: In this proceeding, Kilpatrick's San Francisco Bakery, complainant, claims unreasonable discrimination results from the application of surplus gas Schedule GS–1 by defendant, Pacific Gas and Electric Company, and requests that defendant be ordered to apply surplus [1] gas rates under its filed tariff GS–1 to all of complainant's gas uses after March 1, 1940. The defendant denies the applicability of Schedule GS–1 to some of complainant's gas uses, and claims that such denial does not constitute unreasonable discrimination.

A public hearing was held at San Francisco on Thursday, February 15, 1940, at which time evidence was taken and the matter submitted for decision.

It is of record that complainant operates a wholesale baking company, located in San Francisco, and uses natural gas in its business principally for boiler fuel and directly under bake ovens, which gas is purchased from defendant. The gas used for boiler fuel is purchased under defendant's surplus Schedule GS–1 and that for the bake ovens under the firm gas rate G–40. The record further shows a fairly uniform monthly gas consumption with billings for firm uses in the neighborhood of 600,000 cubic feet per month, and for surplus of approxi-

[1] Surplus gas is subject to shut off at any time when the requirements of the firm gas users make it necessary. The extent of the investment in transmission and general distribution facilities is determined entirely by the firm gas requirements and not surplus. Surplus gas rates provide for the increment cost of rendering the service plus whatever additional revenue competitive fuels permit. Surplus gas service thus is supplemental to firm and the net earnings realized are applied to and contribute to lower firm rates.

mately 700,000 cubic feet. The average rate paid for the surplus gas during the past year was 20.28 cents per thousand cubic feet, while the corresponding figure was 32.3 cents for firm gas.

The complainant presented testimony showing that it is at present engaged in building a new and enlarged plant which will have installed, among other units of equipment, a bake oven described as "a steam tube traveling plate oven." [2] It was brought out that this new oven differs from the old type in so far as heat application is involved in that the temperature in the baking chamber is raised by heat radiation from steam coils rather than directly from fuel burned. It was also shown that the combustion chamber, in which the steam coils are heated, is an integral part of the oven.

It was complainant's contention that the utilization of gas in the new ovens would justify the application of a surplus gas rate under Schedule GS–1, and it pointed particularly to Condition 1 of the availability clause of that schedule wherein provision is made to supply gas for "boiler fuel for boilers producing steam primarily for other than building heating." [3]

Complainant likewise called attention to the thirteen other uses or classes of service that now qualify under the surplus rate and contended that its new bake-oven usage is not different from many of these and should be included; otherwise discrimination against the baking industry would result.

Answering these contentions, the defendant utility contended first that the complainant had failed to show that that part of the new bake oven in which gas is burned is in fact a "boiler" within the meaning of Condition (1) of the availability clause of Schedule GS–1. It is defendant's further position that the availability provision should not be extended to include other classes of customer usage, such as bake ovens, now regularly served on firm gas rates when competitive forces

[2] W. I. McDonald, a witness for the complainant, described the new ovens by saying: "The oven is made up of a series of steam tubes and they are partially filled with a liquid; they are so arranged in the fire box and in the baking chamber in an inclined position keeping this liquid at the tip of the tube that is exposed to the fire box and the heat impinging on the end of that tube creates a superheated steam that travels the length of the tube and thereby radiates heat to the baking chamber."

[3] The availability clause is as follows:

Available, upon application, to customers located along existing mains having a delivery capacity in excess of the then existing requirements of other customers, for surplus natural gas of a heating value of 1,100 to 1,200 B.T.U. per cubic foot, used for the following purposes where operation can be readily continued on other fuels in case of shutoff of gas supply:

1. Boiler fuel for boilers producing steam primarily for other than building heating.
2. Building heating with a minimum payment guaranty of $4,200 per year.
3. Heating of greenhouses.
4. Glass melting tanks, including glass works feeder furnaces if in combination with gas for melting tanks.
5. Steel and iron melting furnaces, and furnaces for heating or heat-treating steel and iron products.
6. Vitreous enameling furnaces.
7. Core ovens and mould drying ovens in foundries.
8. Dehydrators and evaporators for fruit, nuts, vegetables, hay, and milk.
9. Driers for sand, gravel, salt, barrels, soap, magnesia, rugs, molasses, malt, and metal parts after cleaning or chemical treatment.
10. Kilns and driers for brick, tile, pottery, porcelain, lime, cement, bone char, black ash, and ore.
11. Heating of swimming tanks.
12. Incinerators for garbage and refuse destruction.
13. Asphalt melting tanks used in paving work, roofing, and pipe manufacturing plants.
14. Sulphur stills.

and economics of utilization make possible the use of such firm gas.

The issue raised is whether gas delivered to complainant for use in its new bake oven is entitled to a surplus rate. If defendant's Schedule GS–1, as it now stands, cannot fairly be construed to apply to the particular gas uses of complainant, the remaining question for consideration is whether the scope of the tariff should reasonably be extended to include service of this character.

It is my opinion that the record does not justify the conclusion that the burning of gas in the contemplated special type bake ovens comes within the meaning of any provision of Schedule GS–1. This conclusion necessarily follows from the record, as the complainant did not establish nor finally contend that the steam tube oven was a boiler, though it was argued that the steam tubes in the oven operated on a boiler principle. Viewing this problem of surplus usage from its broader aspects, I seriously question whether defendant utility should necessarily further extend surplus gas service to the baking industry, even though the baking function might be accomplished through the operation of a boiler. In this same respect the evidence shows that any transfer of existing firm use customers to a lower surplus schedule would operate contrary to the purpose and justification of surplus service, namely, to augment and to supplement firm gas sales, in order to help contribute something to the firm gas support, although not returning full cost of service.

It was likewise developed from the evidence that no longer does there exist surplus system capacity as in the development period when defendant's GS–1 surplus schedule was inaugurated. As a consequence, new classes of consumer groups should not now be accorded surplus rates unless particular justification be shown. It may be conceded that any such classification of consumers as now specified in defendant's Schedule GS–1 might result in a preference to those thus listed and a discrimination toward those not so included, even though they may be willing to accept the "shut-off" provision. Such differences in rates, however, are not necessarily unreasonable differences. I see no way of avoiding a rather arbitrary classification of those gas consumers who are to be accorded the lower surplus rates. The classes or groups listed in defendant's schedule may not be deemed a closed category. Likewise, it may develop that some gas users now included in the schedule may not properly be entitled to such rates. But, upon this record, I do not believe that an order could be justified directing the defendant to open its surplus schedule to just one complainant within a given industry when the results might be real discrimination against other business firms of the same type. Likewise, in so far as equity is involved, it appears that the use of gas in the bake ovens at the firm rates offers a very desirable class of service that has been able, in the past, to compete successfully with other fuels and the conclusion seems to be clear that complainant should be willing to pay the reasonable cost of such service as provided in the firm rates, in order that it may contribute its fair share of the total costs in rendering gas service along with all other firm gas users.

NORTH DAKOTA BOARD OF RAILROAD COMMISSIONERS

Re Otter Tail Power Company

[Case No. 3684.]

Rates, § 198 — Unit for rate making — Interstate utility.

1. The entire property of an interstate utility was considered as one unit for rate-making purposes because of the integrated manner of operation of the utility and the difficulty of an allocation of the property by geographic divisions upon a functional basis, where an allocation would not materially change the result shown for the company as a whole, p. 304.

Valuation, § 238 — Unowned property — Wells.

2. The value of wells not owned by a water utility should not be included in the rate base when no payment was made by the company for the wells and no payment is made for the water taken from the wells, p. 305.

Valuation, § 94 — Accrued depreciation — Deduction of real estate.

3. Real estate values must be deducted from utility property as a whole in order to establish the per cent condition of the depreciable property, p. 305.

Depreciation, § 51 — Electric department.

4. An annual depreciation expense allowance of 4 per cent for the electric department of a public utility was approved, p. 306.

Depreciation, § 60 — Steam heat department.

5. An annual depreciation expense allowance of 3 per cent for the steam heat department of a public utility was approved, p. 306.

Depreciation, § 82 — Waterworks department.

6. An annual depreciation expense allowance of 2 per cent for the waterworks department of a public utility was approved, p. 306.

Depreciation, § 23 — Annual allowance — Composite figures.

7. Percentage allowances for annual depreciation expense were arrived at by computing composite figures for all plant accounts, depreciable property being tabulated by individual accounts and average life figures set up for each class, and the annual rate then being applied to each account so as to obtain a resulting annual accrual, p. 306.

Depreciation, § 32 — Annual allowance — Straight-line basis.

8. Annual depreciation expense allowance was computed on a straight-line basis, p. 306.

Depreciation, § 14 — Basis — Historical cost.

9. Annual depreciation expense should be computed on the historical cost basis of the depreciable property, p. 306.

Valuation, § 86 — Accrued depreciation — Necessity of deduction.

10. The rate base should be a depreciated figure when allowance is made for annual depreciation in operating expenses, p. 306.

Valuation, § 82 — Accrued depreciation — Definitions.

11. Depreciation as applied to a depreciable utility plant is the loss in service value not restored by current maintenance incurred in connection with the consumption or prospective retirement of the utility plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance, p. 306.

Valuation, § 331 — Going concern value — Separate allowance — Proof.

12. No separate allowance should be made for going concern value when a company does not offer or suggest proof of any amount claimed for such an element of value, p. 307.

Valuation, § 300 — Materials and supplies.

13. A public utility is properly allowed to earn a return on the investment it has made in materials and supplies necessary for the ordinary conduct of its operations, p. 307.

Valuation, § 289 — Cash working capital.

14. Cash working capital is that amount of money necessary to finance the ordinary operations of a public utility during the rendering of service and before payment for such service is made, p. 308.

Valuation, § 299.1 — Cash working capital — Adjustment for taxes.

15. Operating expenses used as a basis for cash working capital allowance must first be adjusted to exclude certain items such as taxes which need not be paid till the year following their accrual, p. 308.

Valuation, § 251 — Contributions in aid of construction.

16. Contributions in aid of construction, representing funds collected from the public so that the stockholders of the company do not themselves advance funds for construction purposes, should be deducted from the value of the property in determining the rate base, p. 308.

Expenses, § 70 — Maintenance — Contributed property.

17. Expense of maintenance of property built by contributions in aid of construction should be allowed as an item of operating expense, p. 308.

Depreciation, § 13 — Basis — Contributions in aid of construction.

18. Expense of depreciation of property built by contributions in aid of construction should be allowed as an item of operating expense, p. 308.

Valuation, § 32 — Rate base — Historical cost as measure.

19. Greater weight should be given to historical cost in determining the fair value of a public utility for rate making under a statute providing in part that the value of the property shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property, p. 310.

Valuation, § 30 — Rate base — Measures of value — Historical and reproduction cost.

20. Historical cost and cost of reproduction undepreciated should be weighed in determining fair value for rate making, giving due consideration to the company as a going and operating utility, p. 310.

Rates, § 603 — Water — Minimum bill.

21. A net minimum water bill of $1.67 was held to be too high and was reduced to $1, p. 311.

Return, § 83 — Combined utility.

22. A 6 per cent return was held to be adequate for a combined electric, water, and steam heat utility, p. 311.

[April 22, 1940.]

PROCEEDING *on motion of Commission to ascertain reasonableness of rates for electric, steam heat, and water services; reduction in minimum bill for water service ordered and company permitted to file adjusted rates for electric and steam heat service.*

By the COMMISSION: The above-entitled matter came on for hearing before the Board of Railroad Commissioners, pursuant to notice mailed all interested parties, at 10 o'clock A. M., on December 12, 1939, at the Memorial building in the city of Devils Lake, North Dakota, at which time and place the following appearances were entered:

James M. Hanley, Commerce Counsel, North Dakota Board of Railroad Commissioners; Cyrus A. Field, Attorney, Fergus Falls, Minnesota, appearing for the Otter Tail Power Company; F. T. Cuthbert, Attorney, Devils Lake, appearing for the city of Devils Lake as its City Attorney; Mrs. Anna Redmond, Devils Lake, appearing for the City Commission of Devils Lake, as its Finance Commissioner; Albert V. Hartl, Bismarck, Chief Accountant, North Dakota Board of Railroad Commissioners; Robert W. Carlson, Bismarck, Chief Engineer, North Dakota Board of Railroad Commissioners.

These proceedings were instituted by the Commission on its own motion under provisions of Chap. 253, Session Laws of 1935, by a resolution of the Board passed on the 21st day of January, 1938. The resolution provided for the valuation of all properties used by the Otter Tail Power Company of Fergus Falls, Minnesota, in its operations as a public utility within the state for the purpose of ascertaining the reasonableness and justice of the rates and charges of said public utility and for any other purpose necessary for the proper supervision and control of said utility by this Board. The inventory, appraisal, and audit of the company was started about April 1, 1938, by the staff of the Commission under the direction of this Board. The investigation by the Commission's experts was completed in October, 1939, and the appraisal served upon the company.

The Otter Tail Power Company, a Minnesota corporation, is an operating electric, steam heat, and water utility with its main office at Fergus Falls, Minnesota, serving at retail a total of 306 communities in eastern North Dakota, middlewestern Minnesota, and northeastern South Dakota. In addition it wholesales within the same territory to other municipalities and electric utilities. Steam heat service is

provided at Jamestown and Devils Lake, North Dakota, and water service at Devils Lake, North Dakota.

The testimony introduced into the record as to the inventory, appraisal, and audit of the utility was entirely from the staff of the Commission and consisted of the results of an inventory and appraisal made by such staff. The company did not introduce any evidence of that nature. The city of Devils Lake introduced its testimony with three witnesses as to the water supply and industrial electric rates in the city of Devils Lake.

The appraisal of the Otter Tail Power Company was arrived at after an actual field inventory of all properties used and useful in the rendering of utility service. The audit was made by an inspection of the records at the general office of the Otter Tail Power Company together with consultations with company officials and verification by district managers.

It was stipulated by and between the counsel for the Commission and for the utility that the company reports on file with the Commission should be included in this record without being marked or introduced as exhibits, which stipulation included the present rate schedules now on file.

It was further stipulated at the close of the case that the utility had twenty days in which to file a written brief which brief, however, was not filed.

[1] As indicated, the company has a water department, a steam heat department, and an electric department. In this order the valuation of all of the properties of the Otter Tail Power Company will first be shown and then a division and allocation made to the various utility departments. Although this Commission recognizes that its jurisdiction extends only to the rates charged and over the properties located within the state of North Dakota; nevertheless, because of the integrated manner of operation of this utility, it is necessary to consider the entire property as one unit and it shall so be considered in the writing of this order. An allocation of the property by geographic divisions upon a functional basis would be difficult. However, as shown on page 4 of Commission's Exhibit No. 10, if an allocation were made on any one or any combination of the ordinary measures used for such allocation, such as gross revenues, kilowatt-hour sales, customers, or property, the result for North Dakota only would not be materially changed from the result shown for the company as a whole. The retail rates of this company tend to be uniform throughout its system; consequently, a true comparison of operating results can be made between the states which this utility serves.

Valuation

The chief engineer for the Commission introduced in evidence an historical cost appraisal and a cost of reproduction appraisal of the physical property of the company devoted to the public use as of December 31, 1938. Exhibit No. 7, introduced by the same witness, taken from the company's records, sets out additions after December 31, 1938, bringing the appraisal down to date of December 1, 1939. No appraisal was offered in evidence by the utility.

For the sake of convenience, the summaries of Exhibits Nos. 1, 3, and 6, taking into consideration the al-

locations of boiler plant equipment to the steam heat department, as shown in Exhibit No. 6 and summarized in Exhibit No. 8, are shown in tabular form for both historical cost and cost of reproduction:

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Historical Cost as of December 31, 1938	$16,364,087	$255,929	$168,011	$16,788,027
Net Additions to December 1, 1939	714,644	349	5,760	720,753
Total Historical Cost	$17,078,731	$256,278	$173,771	$17,508,780

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Reproduction Cost as of December 31, 1938	$18,176,308	$293,835	$194,193	$18,664,336
Net Additions to December 1, 1939	714,644	349	5,760	720,753
Total Reproduction Cost	$18,890,952	$294,184	$199,953	$19,385,089

[2] It is shown by the evidence and the reports of the company that the water department at Devils Lake derives its water from two wells originally constructed and now owned by the city of Devils Lake. No payment was made by the company for the wells and no payment is now made or has been made for the water taken from the wells. It is to be noted that the value of the wells has not been included in the valuation of the water department of the company, and in determining the rate base the company is not given a return upon the value of such wells.

Commission's Exhibit No. 3 shows cost of reproduction less depreciation as of December 31, 1938. Below is a tabulation showing the summary by departments together with net additions to December 1, 1939:

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Cost of Reproduction	$18,176,308	$293,835	$194,193	$18,664,336
Depreciated Value	15,269,116	211,077	145,645	15,625,838
Net Additions to December 1, 1939	714,644	349	5,760	720,753
Net Depreciated Value	$15,983,760	$211,426	$151,405	$16,346,591

Per Cent Condition of Total Property

Electric Department	84.0%
Steam Heat Department	71.8
Waterworks Department	75.0

[3] The present condition of the property as a whole is derived from the above-tabular statement, but in order to establish the per cent condition of the depreciable property, it is necessary to deduct real estate values.

Commission's Exhibit No. 4 shows accrued depreciation based on historical cost, as of December 31, 1938. The tabulation below shows the summary together with net additions to December 1, 1939:

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Historical Cost	$16,364,087	$255,929	$168,011	$16,788,027
Depreciated Value	13,760,866	184,135	126,008	14,071,009
Net Additions to December 1, 1939	714,644	349	5,760	720,753
Net Depreciated Value	$14,475,510	$184,484	$131,768	$14,791,762

Note: Depreciation has not been determined upon the net additions. Due to their recent installation, they are considered in 100 per cent condition.

Section 4609c37 of the Compiled Laws of the state of North Dakota specifies certain items that must be found by the Commission in determining the fair value of the property under consideration. They are as follows:

Subsection (a) Land $287,959

Subsections (b) and (c)

Subsection (d)

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Reproduction Cost	$18,176,308	$293,835	$194,193	$18,664,336
Land	287,563	396	0	287,959
Reproduction Cost Less Land	$17,888,745	$293,439	$194,193	$18,376,377

Subsections (e) and (f)

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Reproduction Cost Less Land	$17,888,745	$293,439	$194,193	$18,376,377
Depreciation	2,907,192	82,758	48,548	3,038,498
Depreciated Cost of Reproduction Less Land	$14,981,553	$210,681	$145,645	$15,337,879

Section 4609c38 provides for net additions after date of appraisal. These values, as shown in Exhibit No. 7, were ascertained from the records of the company and by verification in the field, and are as follows:

Net Additions Jan. 1, 1939 to Dec. 1, 1939

Electric Department	$714,644
Steam Heat Department	349
Waterworks Department	5,760

We point out the foregoing findings to show compliance with our statute on valuation. Subsection (g) will be dealt with under the title, "Fair Value."

Depreciation

[4–11] Commission's Exhibit No. 5 shows the annual accrual for depreciation expense by departments. From a study of this exhibit and other pertinent material contained in the testimony and exhibits offered in this case, the Board finds that an annual depreciation expense allowance of 4 per cent for the electric department, 3 per cent for the steam heat department, and 2 per cent for the waterworks department will compensate the utility for all factors of depreciation existing in its property. These percentages are arrived at by computing composite figures for all plant accounts. The depreciable property is tabulated by individual accounts and average life figures set up for each class. The annual rate is then applied to each account and the result is the annual accrual. The total annual accrual for each department is then determined and this figure is divided by the depreciable property figure to arrive at an average annual rate. This depreciation is to be computed on a straight-line basis. The total annual depreciation expense allowance will be computed on the historical cost basis

of the depreciable property. The summary is as follows:

	Electric Dept.	Steam Heat Dept.	Water Dept.	Totals
Historical Cost Less Land	$16,076,524	$255,533	$168,011	$16,500,068
Net Additions to December 1, 1939	714,644	349	5,760	720,753
Total Depreciable Property	$16,791,168	$255,882	$173,771	$17,220,821
Annual Depreciation Expense	671,647 (4%)	8,432* (3%)	3,475 (2%)	683,554

*1% extra on allocated portion of electric property included. ($75,525)

The same factors which cause annual depreciation also are responsible for the accrued depreciation or accrued loss in service value. Consequently, if it is necessary and proper to make allowance for annual depreciation in operating expenses, the same reasoning would indicate that the resultant rate base should be a depreciated figure.

As applied to a depreciable utility plant, depreciation is the loss in service value not restored by current maintenance incurred in connection with the consumption or prospective retirement of the utility plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Sound, consistent accounting would indicate that such depreciation must be computed on the historical cost of the property. Any other base would be an illusionary, fluctuating standard. For these reasons, as in the past, this Commission in its computation of annual depreciation expenses and in its deduction of accrued depreciation will proceed from an historical cost base.

Going Concern Value

[12] There is no testimony in the record that can justify a separate allowance for going concern value in determining the rate base for this company. It is incumbent upon the company to prove any amount claimed as a separate allowance for going concern value. No such proof was offered or suggested. Therefore, no separate allowance for going concern value will be made.

Materials and Supplies

[13] It is proper that the utility be allowed to earn a return on the investment it has made in materials and supplies necessary for the ordinary conduct of its operations. Commission Accountant Hartl introduced as part of Exhibit No. 10 statements showing the materials and supplies carried in stores at the end of each month for the fiscal year ending July 1, 1939. These figures were supplemented by Utility Witness Hatch through Exhibit No. 18, which shows the investment in materials and supplies in the hands of the operating forces throughout the system of the utility. An average of the various amounts would indicate that the proper allowance for materials and supplies for the electric department would be $160,-040; the steam heat department $1,-100; and the waterworks department $1,500. These figures based upon past experience are, in the opinion of the Commission, proper allowances for future operations.

Cash Working Capital

[14, 15] Cash working capital is that amount of money necessary to finance the ordinary operations of the utility during the rendering of service and before payment for such service is made. The testimony offered in this case would indicate that a lag of about six weeks between expenditures and reimbursements exists in the case of the Otter Tail Power Company. The necessary cash working capital is now ascertained by taking six weeks of average operating expenses or 6/52 of the total operating expenses shown on Page 1 of Exhibit No. 10. However, such expenses must first be adjusted to exclude certain items such as taxes which need not be paid till the year following their accrual. Such computation results in a cash working capital allowance for the company of $200,000. This amount allocated on a revenue basis between departments results in a cash working capital for the electric department of $190,000; steam heat department $8,000, and water department $2,000. In the opinion of the Commission, based upon the testimony in this case, such allowance will provide sufficient cash working capital for future operations.

Contributions in Aid of Construction

[16–18] The record shows an item of $361,660 carried on the books of the company as "Contributions in Aid of Construction." Mr. Hartl, chief accountant of the Commission, testified that this item should be deducted from the fair value of the property in determining the rate base and that this sum represented moneys advanced by others than the utility.

The Uniform System of Accounts for Electric Utilities promulgated by the National Association of Railroad and Utilities Commissioners, and adopted by the North Dakota Board of Railroad Commissioners, states, in Account 265, under Balance Sheet Accounts, that contributions in aid of construction "shall include donations or contributions in cash, services, or property from states, municipalities, or other governmental agencies, individuals, and others for construction purposes."

Mr. Field, as counsel for the utility, filed a memorandum brief upon this point and suggested the rule that contributions in aid of construction should not be deducted from the value of the property and that the company should be permitted to earn a return upon these contributions.

It is to be noted that these contributions are moneys contributed to the company for the purpose of construction. The stockholders of the company have not in these instances advanced their own funds for these purposes.

In its brief the utility cites as a basic rule the case of Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418. The court laid down the general principle that the basis of all calculations as to reasonableness of rates must be the fair value of the property being used by the company for the convenience of the public.

The company also cites the case of Public Utility Comrs. v. New York Teleph. Co. 271 US 23, 70 L ed 808, PUR1926C 740, 744, 46 S Ct 363, The Supreme Court stated: "Constitutional protection against confiscation does not depend on the source of

the money used to purchase the property. It is enough that it is used to render the service."

The company also cites two New York cases, which base their decisions upon the New York Telephone Case. These are New Rochelle Water Co. v. Maltbie (1936) 248 App Div 66, 15 PUR(NS) 32, 289 NY Supp 388; and Long Island Lighting Co. v. Maltbie (1937) 249 App Div 918, 18 PUR (NS) 225, 292 NY Supp 807.

A reading of the New York Telephone Case, *supra,* PUR1926C at pp. 741, 745, discloses that the company books showed a credit balance in the depreciation reserve account of almost $17,000,000. This fund had been invested in the telephone company's plant. The New York Commission held that this credit balance was more than was required for the maintenance of the property and "directed that $4,750,000 of that amount be used by the company to make up deficits in any year when earnings are less than a reasonable return as found by the Board." The New York Commission contended that the excess depreciation reserve constituted excess earnings by the company and apparently took the view that such excess earnings, having been invested in the company plant, amounted to contributions by the customers. The supreme court said in part: ". . . the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations. Profits of the past cannot be used to sustain confiscatory rates for the future."

In thus holding that the Commission was in error, the supreme court laid down the general rule above quoted.

It is the opinion of this Commission that the facts and circumstances of the New York Telephone Company Case, *supra,* are so foreign to the facts in the instant case that the rule therein laid down cannot be taken as a criteria for the rule to be applied in this case. The general dicta in the New York Telephone Case is not controlling in this case.

The New York decisions, above cited, are based upon the New York Telephone Case. The facts in the former cases are more nearly on all fours with the instant case but this Commission does not feel that they are controlling in view of the doubtful authority of the New York Telephone Case upon such facts.

The California supreme court in the case of Sutter Butte Canal Co. v. Railroad Commission (1927) 202 Cal 179, PUR1928A 811, 259 Pac 937, sanctioned the exclusion by the California Commission of $309,000 donated by landowners for an extension of the canal.

The Rhode Island supreme court in Public Utilities Commission v. East Providence Water Co. 48 RI 376, PUR1927C 417, 136 Atl 447, excluded from the rate base the value of hydrants supplied by the city.

In addition to the above authorities, the state Commissions have in recent years been almost unanimous in holding that donated property, or, as expressed in the testimony in this case, contributions in aid of construction, should be excluded in determining the rate base upon which the utility is entitled to earn a return. States which have so held include California, Ne-

braska, Oregon, Virginia, Indiana, Nevada, New Jersey, North Dakota, Pennsylvania, Rhode Island, Wisconsin, Ohio, and Washington.

It appears to the Commission that it is manifestly unfair to permit a utility to collect funds from the public in order to build its plant and then to permit the company to demand a return upon the value of such property. A customer has been required to furnish funds to build the property in order to obtain service and the company now wants the same customer to again pay for this property by including the same in the rate base upon which the company is entitled to a return. Inclusion of expense of maintenance and depreciation in the operating expenses of the company is permissible. The company is charged with the cost of maintenance and replacement.

It is the opinion of the Commission, therefore, that the item "Contributions in Aid of Construction," should be deducted from the value of the property in determining the rate base, but that the expenses of maintenance and depreciation of such property should be allowed as items of operating expenses.

Fair Value

[19, 20] The most important and exacting task in any rate case is the finding of fair value. All other findings of value are secondary or supplementary thereto. In determining fair value, all elements of value are to be considered. No formula has yet been derived nor any method proved infallible. The element of judgment still prevails. It is a determination of what, under all facts and circumstances of the case, is a just and equitable amount on which the return allowed the corporation is computed.

On this question of valuation, the Commission has consistently followed the rule laid down in Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, requiring that historical cost and cost of reproduction be considered and given due weight; and in this decision we have weighed them together, giving to each such weight as in our judgment was necessary to arrive at a proper and fair conclusion, considering all other proper facts and circumstances, such as going concern value.

Subsection (g) of § 4609c37 of the 1925 Supplement provides in part, "The value of the property of a public utility, as determined by the Commission, shall be such sum as represents as nearly as can be ascertained the money honestly and prudently invested in the property."

Reading this sentence in conjunction with the entire section, it was, in the opinion of this Commission, the intention of the legislature to require the greater weight to be given to historical cost in determining the fair value of any public utility. In the opinion of this Commission, such requirement is in keeping with the principles laid down by the Supreme Court in the Smyth v. Ames Case, *supra*, and is further in keeping with sound principles of utility regulation.

In keeping with the above principles, the Commission has in its judgment weighed the historical cost and cost of reproduction, undepreciated, and giving due consideration to the company as a going and operating utility, has arrived at the present fair value of the property of the various

departments used and useful in the rendering of electric, steam heat, and water service, as follows:

Electric Department	$17,350,000.00
Steam Heat Department	269,000.00
Water Works Department	182,000.00

Rate Base

There now remains the actual computation of the rate base, which is set out by departments as follows:

Electric Department	
Fair Value	$17,350,000
Less:	
Accrued Depreciation	2,603,000
Contributions in aid of Construction	361,660
Subtotal	$14,385,340
Add:	
Materials and Supplies	160,040
Cash Working Capital	190,000
Rate Base	$14,735,380
Steam Heat Department	
Fair Value	$269,000
Less:	
Accrued Depreciation	71,794
Add:	
Materials and Supplies	1,100
Cash Working Capital	8,000
Rate Base	206,306
Water Department	
Fair Value	$182,000
Less:	
Accrued Depreciation	42,000
Add:	
Materials and Supplies	1,500
Cash Working Capital	2,000
Rate Base	$143,500

Operating Revenues and Expenses

The operating revenues, expenses, and net operating income before depreciation are set out in the following statement:

	Electric Dept.	Steam Heat Dept.	Water Dept.
Operating Revenues	$2,910,396.58	$78,084.61	$31,387.15
Operating Expenses	1,703,629.93	68,051.57	18,945.42
Net Operating Income (Before Depreciation)	$1,206,766.65	$10,033.04	$12,441.73

Both revenues and expenses have increased steadily since 1933. Therefore, the Commission is of the opinion that the above revenue and expense figures are more indicative of future revenues and expenses than any other figure shown in the testimony.

Rates

The company has had in effect for several years a residential electric rate of the block type. This rate might be considered promotional to the extent that the bottom step is being sold at a very low rate. The Commission suggests that the consumption and revenue in these low blocks be analyzed to determine whether such sales are being made below cost with a consequent subsidization by other sales. If such a situation is found, it should be corrected by a refiling of the rates concerned.

[21, 22] For many years residential water service at Devils Lake was furnished at a flat rate. Within the last year the company completed the installation of meters and is now furnishing all water service on a metered basis. The net minimum bill, under the present rate for water service is $1.67. In the opinion of the Commission, and considering the quality of the product supplied with the consequent low consumption, such minimum is too high and should be reduced.

Rate of Return

From a study of the present money market, the yield on corporate bonds

and stocks, the yield of government bonds, and interest rates in the utility field, it appears that a 6 per cent return is adequate, and we will, therefore, allow approximately a 6 per cent return on the rate base shown herein; and it follows that on the above basis, the total revenue requirement of each of the departments of this utility to produce the above rate of return is as follows:

	Electric Dept.	Steam Heat Dept.	Water Dept.
Operating Expenses	$1,703,630	$68,052	$18,945
Depreciation	671,647	8,432	3,475
6% Return	884,123	12,378	8,610
Revenue Requirement	$3,259,400	$88,862	$31,030
Actual Revenue	2,910,397	78,085	31,387
Deficit or Excess	(349,003)	(10,777)	357

Summary of Findings

On the basis of such anticipated revenue requirement, as compared to the actual net operating income now being earned, we find that if the present rates are continued, the electric and steam heat departments may be expected to have deficient earnings and the water department excess earnings. This situation should be equitably adjusted. The proposed change in the water rates which the Commission will order in effect will decrease revenues to a much greater extent than the present excess earnings. Such reduction the Commission feels justified in making due to the savings in operating expenses which will accrue due to the rendition of metered service. The Commission finds, however, that such excess earnings did not exist throughout the period of this investigation, therefore, will not order such reduction to be retroactive.

ORDER

And it is *ordered* that the Otter Tail Power Company, if it deems it advisable may file adjusted rates for electric and steam heat service. Such refiling, if made, shall be in accordance with the Commission's finding in the preceding section entitled, "Rates."

The Otter Tail Power Company shall immediately file a revised schedule of residential water rates which will be designed to provide a net minimum bill of $1; this new rate to be effective on all billings after date of this order.

And it is so *ordered.*

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Sylvan Spring Water Company

[Case No. 9988.]

Service, § 117 — Obligations to customers — Water utility.

1. A company which has undertaken to supply water to the residents in its territory and has assumed the privileges of the business is required to meet the obligations to its consumers which go with it, p. 320.

Service, § 479 — Water — Improvements to maintain pressure.

2. A water company which has assumed the obligation to furnish service at a summer resort, but which has been unable to maintain adequate water pressure during a period when it has had a steady income and history of substantial dividends, should be required to replace transmission pipes with larger pipes in order to render reasonably adequate service, p. 320.

[April 30, 1940.]

PROCEEDING *on motion of Commission to investigate the services, practices, and facilities of a water company; replacement of transmission pipes with larger pipes ordered so as to render adequate service.*

APPEARANCES: Robert W. Austin, Assistant Hydraulic Engineer, for the Public Service Commission; Coley, Kiley & Kiley (by H. W. Coley and E. A. Kiley, of counsel), Oneida, Attorneys for the Sylvan Spring Water Company; J. G. Cavanaugh, Assistant Secretary-Treasurer, for the Sylvan Spring Water Company; F. N. Thomson, Utica, District Sanitary Engineer, New York State Department of Health; Thomas L. Taylor, Sylvan Beach, consumer of Sylvan Spring Water Company.

BREWSTER, Commissioner: This proceeding was instituted on a motion of the Commission following complaint filed with the Commission by Thomas L. Taylor, a customer of the Sylvan Spring Water Company, and a report thereon by Robert W. Austin, assistant hydraulic engineer of the Commission. A hearing was held before me at Oneida on August 24, 1939, at which a number of customers of the company were present.

This company serves a community consisting of Sylvan beach, Kyser's beach, and Verona beach, all located at the eastern end of Oneida lake. The entire community is a summer resort community and has between 850 and 900 consumers in the summer season. There are eight or ten hotels, some small stores, and a large number of

cottages. There are very few year-round consumers.

The company has two reservoirs; the Hallenbeck reservoir is located 1½ miles north of Sylvan beach village and the Vienna reservoir is located about one mile northeast of the Hallenbeck reservoir. These two reservoirs are connected with an 8-inch pipe. The Vienna reservoir is somewhat higher than the Hallenbeck reservoir and water flows by gravity from the Vienna reservoir to the Hallenbeck reservoir. Between Hallenbeck reservoir and the pump house, located near the north limits of Sylvan beach, there is an 8-inch cast iron transmission pipe line extending for 2,100 feet towards the chlorinator house. At that point the pipe line decreases from 8 inches to 6 inches and is carried the remainder of the distance to the chlorinator house in 6-inch cast iron pipe a distance of 3,445 feet. At the chlorinator house there is operated a small gasoline pressure pump whose purpose is to boost the pressure at times of maximum use. From the chlorinator house southerly a 6-inch distribution main extends to the point where the Barge canal enters the lake. From this point a 4-inch distribution main extends to Oneida creek, a distance of about 2 miles. The 6-inch distribution main passes through and supplies the principal community known as Sylvan beach. That part of the community from the barge canal to Oneida creek is called Verona beach. From Oneida creek a 2-inch distribution line extends to Willow Grove and Kyser's beach.

On the day of the hearing—August 24, 1939—Mr. Freiberger, superintendent of the company, stated that he took the pressure at his home in Sylvan beach and found it to be 15 pounds. He also took the pressure at a point on August avenue located south of the Barge canal at Verona beach and found it to be 10 pounds. He took the pressure at Mr. Taylor's residence at Kyser's beach and found it to be 12 pounds at ground level. He took the pressure at the chlorinator house and found it to be 30 pounds.

During the summer season there is a population during week days of July and August of approximately 7,000, increasing over the week-ends to peak figures of about 18,000. During the off season there is a population of about 300.

The testimony shows that during week days in the summer season the pressure at the Willow Grove and Kyser beach sections of the line, especially on the 2-inch line, is a maximum of about 10 pounds. That during the week-ends there is practically no pressure, that at times of the day when there is a large consumption of water, there is only a slight flow of water on the ground floor and no water on the second floor of any of the cottages. Most of the cottages are one-story bungalow type but there are some residences of two stories. In the 2-story residences it is not possible during the week-ends to get sufficient water on the second floor to flush the toilets. There is usually sufficient water to flush the toilets on the first floor but there are times when it barely runs into the toilet tank, although at other times there is a fair supply. The worst days are during the week-end and the worst periods of the day

around 8 o'clock in the morning and in the evening.

The testimony also shows that one consumer has a hotel at Sylvan beach and cottages adjoining it. This hotel is three stories. The hotel is used during the summer season and at that time it is not possible to get any water on the third floor. The proprietor is obliged to carry water in pails to flush the toilets on the third floor. On the second floor it is possible to get water although the pressure is at times low and the shortage of water is most pronounced during the week-ends.

One of the cottage residents at Sylvan beach, where there is a 6-inch line, testified that on Sundays and holidays when there are larger groups at the beach, they could not get water on the second floor and he was obliged to carry water to that floor. That if all of the faucets on the first floor were cut off then they could build up sufficient pressure to get water on the second floor.

Sylvan beach has a fire district, bounded on the south by Oneida creek, running up to Black creek, following Black creek to the O. & W. Railroad, and the O. & W. Railroad to Muskrat creek. This area includes a distance from about 1,000 feet north of the pump house southerly, including all of what is known as Sylvan beach and Verona beach. There are 49 hydrants. The fire district has a fire pumping apparatus which is said to have a rated capacity of 750 gallons per minute. The volume of water available from the hydrants is such that this engine can only operate for a short time without having the water supply give out. No charge is made for hydrant service, and no revenue is received by the company for furnishing water to a community park with toilets, etc., at Sylvan beach. It seems that some years ago the rate for a single house was increased from $8 to $11 per year because hydrants had been installed and the cottagers had some fire protection. This charge was made prior to the time privately owned companies came under Commission jurisdiction.

At the close of the hearing on August 24, 1939, the company was requested to make a study to determine what change in facilities could be made to increase the supply of water and the pressure and what the cost thereof would be. The company employed the firm of Barker & Wheeler, engineers of Albany, and that firm made a study and report to the company, which report was presented in evidence at a hearing held on April 8, 1940. This report states that the greater part of the population served occupies the area north of the Barge canal in the section known as Sylvan beach and which is served by a 6-inch distribution main. Verona beach section with a 4-inch main has a more scattered population, and Willow Grove and Kyser's beach, south of Oneida creek, and south of Verona beach, have a comparatively small number of consumers.

The Sylvan Spring Water Company was incorporated and the original system constructed in 1894. The original distribution system consisted of 8,371 feet of 6-inch and 4-inch cast iron pipe. Through a period of years the distribution system has been added to until it now consists of 36,456 feet of 6-inch and 4-inch cast iron pipe and

29,292 feet of 2½-inch and smaller size wrought iron and galvanized pipe. In 1914 the company purchased a mill property on a small stream 5,714 feet to the northeast of the Hallenbeck reservoir and developed it to what is now known as the Vienna reservoir. This has a storage capacity of 1,600,000 gallons and the Hallenbeck reservoir has a capacity of 1,415,000 gallons. Water may be used from the Vienna reservoir direct by means of a by-pass of the Hallenbeck reservoir or the Vienna reservoir may be closed off and water used from the Hallenbeck reservoir.

In 1934 pumping equipment was installed at the chlorinator house where the transmission line ends and the distribution line begins. At that time a 6-inch cast iron suction line was extended to Oneida lake through which an emergency supply of water may be pumped when needed. This line has not been extended into the lake any distance. The company has permission from the State Water Power and Control Commission to use this water for emergency use only. The pumping equipment at the pump house is a Gould pump with a Continental gasoline motor and has a capacity of 300 gallons per minute. The sole use of this pumping apparatus has been to boost the inadequate pressure at times of maximum use.

There is no definite record of the amount of water used in the course of the year. There is a venturi meter on the transmission line at the chlorinator house which records the rate of flow at all times. The superintendent takes frequent readings of the volume of water passing through the meter and it is estimated that from 175,000 to 225,000 gallons per day represents the normal use considering the period when the summer visitors are not present and from 225,000 to 275,000 gallons per day during the summer season with the exception of week-ends. During the week-ends the volume will vary from 275,000 to 300,000 gallons per day, with occasional peaks of 350,000 per day.

It is the opinion of the engineers making the survey that the consumption will not increase very considerably in the near future unless a state park is created at Verona beach which was stated to be a possibility within the next few years.

It is the opinion of the engineers that the present sources of supply are adequate to take care of present needs and any increase which seems in sight at this time exclusive of the supply to the possible new state park. In spite of the fact that the past summer was an extremely dry one there has been no water shortage to this company and the consumers have been furnished with water from the Vienna reservoir and without use of the Hallenbeck reservoir. The engineers believe that the present supply is sufficient to take care of any normal growth. However, if additional water is required there are several sources referred to in the engineers' reports. The ability of the transmission and distribution systems to convey the water from the reservoir to a point where it is needed has not, in the opinion of the engineers, been wholly satisfactory. It is stated in the record:

"Under the present conditions it is impossible to secure an adequate

amount of water at the pump suction in order to supply peak loads in the community."

To meet this condition the engineers recommend that the 6-inch transmission line extending from the junction with the 8-inch line and running from there to the pump house, a distance of about 3,445 feet be replaced with a 10-inch line. The engineers recommend a 10-inch Universal cast iron pipe line with a lining of cement or enamel, or in the alternative, a 10-inch steel bituminous-lined pipe line, wrapped and coated with bituminous enamel. The engineers recommend that after the 10-inch line has been installed and connected at the pump house, that the 3,445 feet of 6-inch transmission line which is now in use should be removed and cleaned and put in condition for reuse, and that it be relaid from the point where the 6-inch distribution line joins the existing 4-inch distribution line along the main highway from the Barge canal south. After the 6-inch line has been so relaid, they recommend that the 4-inch line be removed, cleaned, and relaid to replace the existing 2-inch line. It is also recommended that there be erected an elevated steel tank with 50-foot legs, 50,000 gallons capacity, at a point along the main highway opposite Verona beach just north of the land which it is stated is to be acquired for a state park. With this tank in operation it is stated that the pressure at Oneida creek should be readily maintained at from 22 pounds to 29 pounds and a greater supply of water be made available.

If it is not possible for the company to finance the erection of the steel tank at this time, it is the opinion of the engineers that the other changes recommended, that is, the laying of the new 10-inch transmission line in place of the existing 6-inch line, the relaying of this 6-inch pipe in place of the existing 4-inch pipe, and the removal and cleaning of the 4-inch pipe and its use to replace the 2-inch pipe, would greatly improve the water supply and give a reasonably adequate supply. The estimated cost of the total work is as follows:

3,445 linear feet, 10″ pipe line, furnished and laid at $2.00 per foot	$6,890.00
One 50,000 gallon tank, 50-foot legs	6,500.00
One lump sum, foundation frost case and valve chamber	1,000.00
One altitude valve	200.00
Miscellaneous piping, valves, and specials	125.00
	$14,715.00
15% Contingencies and engineering	2,207.25
	$16,922.25
Salvaging the 6″ pipe across the flats and relaying it south of the canal to connect with the new elevated tank:	
3,445 linear feet of 6″ c.i. pipe salvaged and relaid at 70¢	$2,411.50
Valves and specials	100.00
	$2,511.50
Salvaging 4″ pipe line between the canal and the site of the elevated tank and relaying south of Oneida creek:	
3,445 linear feet 4″ c.i. pipe: salvage and relay at 60¢	$2,067.00
Valve specials	100.00
	$2,167.00

The total cost of all of this work is estimated to be $21,600 and it is contemplated that the removal and cleaning of the 6-inch pipe and its relaying and the removal of 3,445 feet of 4-inch pipe and its relaying would be carried on by the company with its own superintendent and hired labor. It was stated that if this was to be

done by contract it would undoubtedly cost more.

If the steel tank with its necessary foundation, altitude valve, and the estimate for contingencies and engineering for this, is omitted, the engineers estimated that the remainder of the work would be performed at an estimated cost of $13,000. This is with the use of cast iron pipe. If steel pipe was substituted for cast iron pipe, it is estimated by Barker & Wheeler that it would reduce the cost approximately $500. It is the opinion of Mr. R. W. Austin, assistant hydraulic engineer for the Commission, that if the work of cleaning and relaying the existing pipe is carried out by the company with its own forces and the 10-inch pipe installed by contract the work could be performed for less than the estimate of Barker & Wheeler and that the total cost might be nearer $10,000 than $13,000. In making this estimate Mr. Austin considered steel pipe in place of cast iron pipe, and considered that steel pipe could be joined together on the surface and lowered into the ditch and that there would be 30 inches covering of the pipe in the ditch. It was brought out that the present 6-inch transmission line has only about 30 inches of cover and that no trouble had been experienced from freezing, etc. It was further brought out that the ground in which this 6-inch line is laid is wet and swampy and that economies could be made if pipe could be jointed on the ground and lowered into the trench.

The company contends that it is not in a position to finance the expenditure of even the smaller amount of $13,000, and it has not sufficient cash reserves or the ability to raise funds. Attached hereto is an income statement and the balance sheet of the Sylvan Spring Water Company for the year 1939. It will be noted that the cash on hand amounted to $3,120.36.

The company presented as a witness —Mr. Wm. F. Santry, president of the Madison County Trust Company, who stated that he had not made a detailed study of the property but that he had been presented with the expense sheet which he had before him and that he had listened to some of the testimony and that it was his opinion that a loan of $13,000 to this company by the bank would not be given. He also stated—"I haven't any idea how a bond issue would go; I doubt if you could sell a bond issue." He stated that the company had not made an application for a loan and that they had never applied to his bank during the existence of the company. He further stated that he based his statements entirely upon the information furnished him. From that information it appeared that the company had an annual income for the 9-year period 1931–1939, inclusive, of $2,180.78. The statement used by the witness also showed that operating expenses and taxes had increased in higher proportion than the revenues during this period. That in his judgment if a loan of $13,000 was made it would have to be at 6 per cent which would approximate an $800 interest charge. That taking that out of the average income of $2,180 for the 9-year period as reported to him, there would not be much margin left to amortize the loan and that it would not be a quick loan and not attractive as a "note" loan. He

stated that his judgment as to the ability to borrow on a note at the bank or sell bonds was based on the fact that he doubts its ability to pay a loan in excess of $4,000 or $5,000 within three or four years. That the fixed assets of the company are not salable, that they are just good for delivery of water, and that if the water cannot be delivered at a profit by the company, assuming that its management is all right, no one else would want to buy it.

The estimate of $2,180 as given by Mr. Santry, upon which he based his opinion, is set forth in Exhibit No. 4 furnished by the company and is arrived at by taking the total income 1931–1939, inclusive, and deducting therefrom total operating expenses without provision for depreciation, leaving gross profit from which annual depreciation should be deducted, resulting in the average annual profit of $2,180.78 upon which the witness based his opinion.

The profit and loss statement presented by the company for the year 1939, as set forth in Exhibit 4, shows net profit for the year ending December 31, 1939, of $3,024.37 after deduction of depreciation and all charges. It also shows a dividend paid for the year 1939 upon the $50,000 of stock outstanding of $3,000 which is 6 per cent. It should be borne in mind that the first hearing in this case was held on August 24, 1939, and thereafter and while this proceeding was pending, this dividend of $3,000 was declared from surplus.

Exhibit No. 2 submitted by the company shows net earnings after depreciation for the year ending December 31, 1938, of $2,858.60. In this year and on December 15, 1938, the company declared a dividend of $2,500, being at the rate of 5 per cent. The record shows that in the years 1931–1939, inclusive, these being the years referred to by Mr. Santry, in five of the nine years the company declared a dividend of 6 per cent; in one year—1938, 5 per cent; in two years—1932 and 1935, 3 per cent, and in 1931 no dividend was declared. It will be noted that for the last two years—1938 and 1939, the average net income was $2,941.44 which is $861 a year more than the average upon which Mr. Santry based his judgment, and that during the past four years—1936–1939, inclusive, the company declared dividends of 23 per cent, amounting to $11,500. It should also be borne in mind that the company is supplying water to 49 hydrants located in the fire district without any compensation whatever therefor.

Exhibit No. 5 shows that Mr. Fearon, the president of the water company, is the owner of 86 shares; Mary F. Fearon, the owner of 78 shares. H. W. Coley, secretary and treasurer of the water company, is the owner of 425 shares. It, therefore, appears that these two officers are the holders of 511 shares of this company, and that if Mary F. Fearon is a member of the family of Henry Fearon, that these families are the owners of 589 shares out of 1,000 shares outstanding.

Henry D. Fearon, president of the water company, receives a salary of $300 per year. H. W. Coley, secretary and treasurer, a salary of $500 per year and James G. Cavanaugh, as-

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Henry D. Fearon, president of the water company, receives a salary of $300 per year. H. W. Coley, secretary and treasurer, a salary of $500 per year and James G. Cavanaugh, as-

sistant secretary and treasurer, who according to the testimony keeps the books and makes out the income reports and reports to the Public Service Commission and apparently performs the office work of the company, receives a salary of $450 per year. Wm. J. Freiberger, Sr., superintendent of the water company, who has charge of the company and of its water distribution systems, receives $1,000, a total of $2,250, out of total operating revenues for the year 1939 of $11,228.75. It will be seen that 20 per cent of gross operating revenue was applied to salary payments and 26½ per cent to dividends in the year 1939.

It is difficult to believe that this company with a steady income and history of substantial dividends paid would be unable to sell a $10,000 bond issue with which to carry out, in addition to the cash on hand, the required improvements.

Conclusion

[1, 2] The company undertook to supply water to the residents of this territory and having assumed the privileges of the business is required to meet the obligations to its consumers which go with it. The testimony very clearly indicates that the service now being rendered is inadequate. The engineers employed by the company have made specific recommendations. The total program to be carried out would cost some $21,000. It is the opinion of the engineers that the lesser program would greatly improve conditions and render reasonably adequate service, and remove the cause of consumer complaints. Because the transmission pipe to be replaced is in a very swampy section the work of laying the 10-inch pipe must be carried on under suitable weather conditions.

An order should issue requiring the company to replace the 3,445 feet of 6-inch existing transmission pipe with 10-inch transmission pipe at as early a date as suitable weather conditions permit.

That as soon as the 10-inch pipe has been laid and connected at the chlorinator house the company shall promptly extend its 6-inch distribution main southerly along the route of the existing 4-inch main and shall replace such part of the existing 2-inch distribution mains with 4-inch mains as the usable salvage 4-inch pipe will permit.

The company should inform the Commission in writing within fifteen days from the date of service of the order whether it will carry out the requirements thereof.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

Baltimore Transit to Spend $2,000,000 on Improvements

BANCROFT Hill, president of Baltimore Transit Co., has announced a $2,000,000 improvement program involving the purchase of 108 new streamlined trolley cars and 15 new buses.

The company already has 68 streamlined trolleys and Mr. Hill said the new ones, to be built by Pullman Standard Car Manufacturing Co., Worcester, Mass., would give Baltimore "one of the largest fleets of modern rail urban transit cars in the United States."

Ten of the buses will be built by the Yellow Truck & Coach Mfg. Co., General Motors subsidiary, Pontiac, Mich., and five by Mack Trucks.

60,000-KW Turbine Generator For Georgia Power Co.

THE Georgia Power Company is doubling the capacity of its Plant Atkinson at Atlanta as a result of the growth in the company's load in and around Atlanta, and to bring about more flexible load balancing for the entire Georgia System.

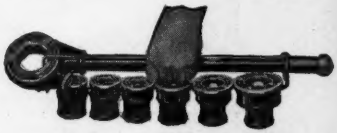
A 60,000-kw turbine generator will be built by the General Electric Co. and will be installed next year. Present equipment at Plant Atkinson consists of a 60,000-kw G-E unit installed in 1930.

The new turbine will duplicate Plant Atkinson's present equipment, and at the same time incorporate turbine design improvements of the last decade. Of the condensing turbine generator type with surface air cooler, the new 17-stage unit will operate at 1800 rpm and drive a 66,667-kva, 13,800-volt, 60-cycle generator. It is designed for steam conditions of 425 lb pressure and a temperature of 725 degrees F and two inches absolute back pressure.

Ratchet and 3-Way Threaders Offered by Ridge Tool

LATEST additions to the RIDGID line of pipe tools made by The Ridge Tool Company of Elyria, Ohio, are five new Ratchet and Three-Way Threaders for small pipe.

Nos. OOR, OR and 11R are of new, stronger design in all-steel malleable-alloy. They thread ⅛ in. to 1¼ in pipe. Separate sets of semi-high-speed tool steel chaser dies are accurately cut, easily removed for regrinding. In No. OOR, die heads are quickly locked in or removed by a pull of the ratchet knob. In Nos. OR and 11R die heads push out easily for changing, snap into ratchet ring from either side, can't fall out. Electrical conduit dies furnished at regular die prices. No special dies are needed for threading pipe close to wall; it is only necessary to turn dies upside-down and shift to positions marked on die-heads. A carrier which conveniently holds the ratchet ring and set of dies is supplied with all complete sets at no extra cost.



No. OR and 11R RIDGID Ratchet Threaders for ⅛" to 1¼" pipe.

No. 30-A and 31-A 3-way Ratchet Threaders for ⅜" to 1" pipe.

The Series Nos. 30A and 31A three-way threaders for small pipe have virtually the same features as the series described above. They are compact, have double ball-end handles and thread pipe from ⅜ in. to 1 in.

Distribution of these tools is made exclusively through wholesale supply houses.

Bell System Sets Record

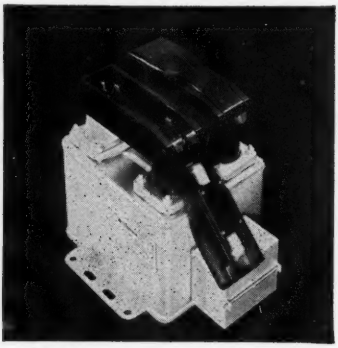
THE principal operating subsidiaries in the American Telephone and Telegraph Company system had a net gain of 18,100 telephones in service in June, according to a recent announcement. This compares with a gain of 15,-

800 instruments in June, 1939. In the first six months of this year the Bell System had a cumulative gain of 449,000 telephones, against 370,000 correspondingly a year ago. At the end of June there were 16,984,600 telephones in operation in the Bell System, a new high record.

The New York Telephone Company, largest operating unit in the A. T. & T. group, reported a gain of 4,594 telephones in June, compared with an increase of 5,449 in June, a year ago. For the first half of this year the company had a gain of 61,581 units, against an increase of 54,743 in the first half of 1939.

Fuse Block for Indoor Use

A NEW fuse block for the type PT indoor potential transformers has been announced by the Westinghouse Electric & Manufacturing Company. This block is assembled on cover



Fuse blocks for type PT indoor potential transformers.

mounted bushings and is available in ratings from 230 volts to 2300 volts inclusive. The block contains a fuse mounted in a hinged moulded bakelite cover. This streamlined protecting device has solderless connectors for the customers cable connections. All live parts are enclosed in the walls of the cover and the base.

Gas Appliance Sales Increase

GAS appliance sales throughout the United States increased substantially during the first five months of this year as compared to sales figures for the same period of 1939, according to C. W. Berghorn, managing director of the Association of Gas Appliance and Equipment Manufacturers.

The strongest rise was in the sale of gas fired furnaces (house heating equipment) which registered an increase of 33.8 per cent during the period January to May, inclusive of this year, as compared to sales for the same months in 1939.

During this five-month period gas range sales rose 14.1 per cent and gas water heater sales were up 13.6 per cent.

West Penn Increases Capacity Of Windsor Station

THE Windsor Station at Power, W. Va., originally built in 1916 and the last extension added in 1922, is unique in that one-half of the plant is owned by the West Penn Power Company and the other half by The Ohio Power Company. The latter in 1937 topped its half by the installation of two 750,000 lb per hr steam generating units supplying steam at 1250 lb 925 F to a 60,000-kw turbine-generator which, in turn, exhausts at 235 lb to three 30,000-kw existing turbines.

A 60,000-kw topping turbine-generator was ordered by the West Penn Power Company at that time for its half of the station, but installation was deferred until May of this year when an order was placed with Combustion Engineering Company for two high-pressure steam generating units to serve this turbine-generator and the other three 30,000-kw existing low pressure turbines, thus completing the topping program for the Windsor Station.

These steam generating units will be of the three-drum bent-tube type, designed for an output of 750,000 lb each and 1525 lb drum pressure, 925 F total steam temperature. They will be equipped with Elesco superheaters and economizers, Ljungstrom air preheaters, and each will be served by three C-E Raymond bowl mills. The furnaces will be of the continuous slag-drip type and will be tangentially fired.

Generating Capacity Expands

THE capacity of generating plants in service in the United States on May 31, 1940, totaled 40,646,000 kilowatts, according to reports received by the Federal Power Commission. This is a net increase of 90,000 kilowatts over that previously reported in service on April 30, 1940.

Exclusive of international transfers, a total of 2,429,580,000 kilowatt hours, or 21.3 per cent of the total generation, was reported as crossing State lines during May, 1940.

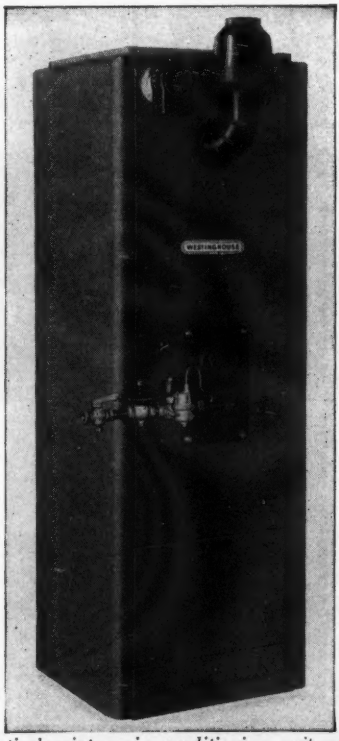
Production of electric energy for public use during May totaled 11,428,552,000 kilowatt hours. Average daily production during May was 368,663,000 kilowatt hours or .5 per cent more than the average daily production in April, and was an increase of 12.3 per cent compared with the same month last year.

The production by water power in May amounted to 4,578,836,000 kilowatt hours or 40 per cent of the total output for public use.

Winter Air Conditioning Unit Designed to Save Space

FOR use where economy and efficiency are essential in small floor space, three compact vertical type GAV gas fired air conditioning units are announced by the air conditioning department, Westinghouse Electric & Manufacturing Co., East Springfield, Mass.

Particularly applicable to small homes and apartments, even the largest of these vertical units takes but 30 in. x 32 in. floor space al-



Vertical winter air conditioning unit saves floor space.

though delivering 90,000 Btu at the register. Each of the three compact cabinet units provide complete winter air conditioning with effectively filtered warm air. In the summer the blower can be used to ventilate the interior of the house.

For quick and economical installation, the units are factory assembled. Return air ducts are often unnecessary. For compactness, blowers and filters are located beneath the heating element. The vertical air flow reduces friction, lessens heat losses and blower load. Spun glass filters impregnated with adhesive substance, strain dust, dirt, pollen from the air.

Magnetic Relay with Control Transformers

THE General Electric Company recently announced a new magnetic relay with control transformer. Summer-winter control of heating boilers supplying domestic hot water, control of water circulator or blower on heating system in response to room thermostat, control of power apparatus on cooling systems in conjunction with room thermostat, operation of two oil burners from a single instrument, and the application of power to unit heaters and unit coolers at direction of low-voltage thermostat are some of the uses to which this new control can be put.

These controls consist of enclosed relay and low-voltage-transformer units used as the relaying means between low-voltage thermostats, limit switches, or other low-voltage controls and line-voltage loads such as motors. The relay is a double-pole, double-throw form. When it is used with a 3-wire low-voltage device, one pole is used as a holding circuit, hence only one pole is available for a power circuit. The transformer supplies low-voltage energy to the relay circuit.

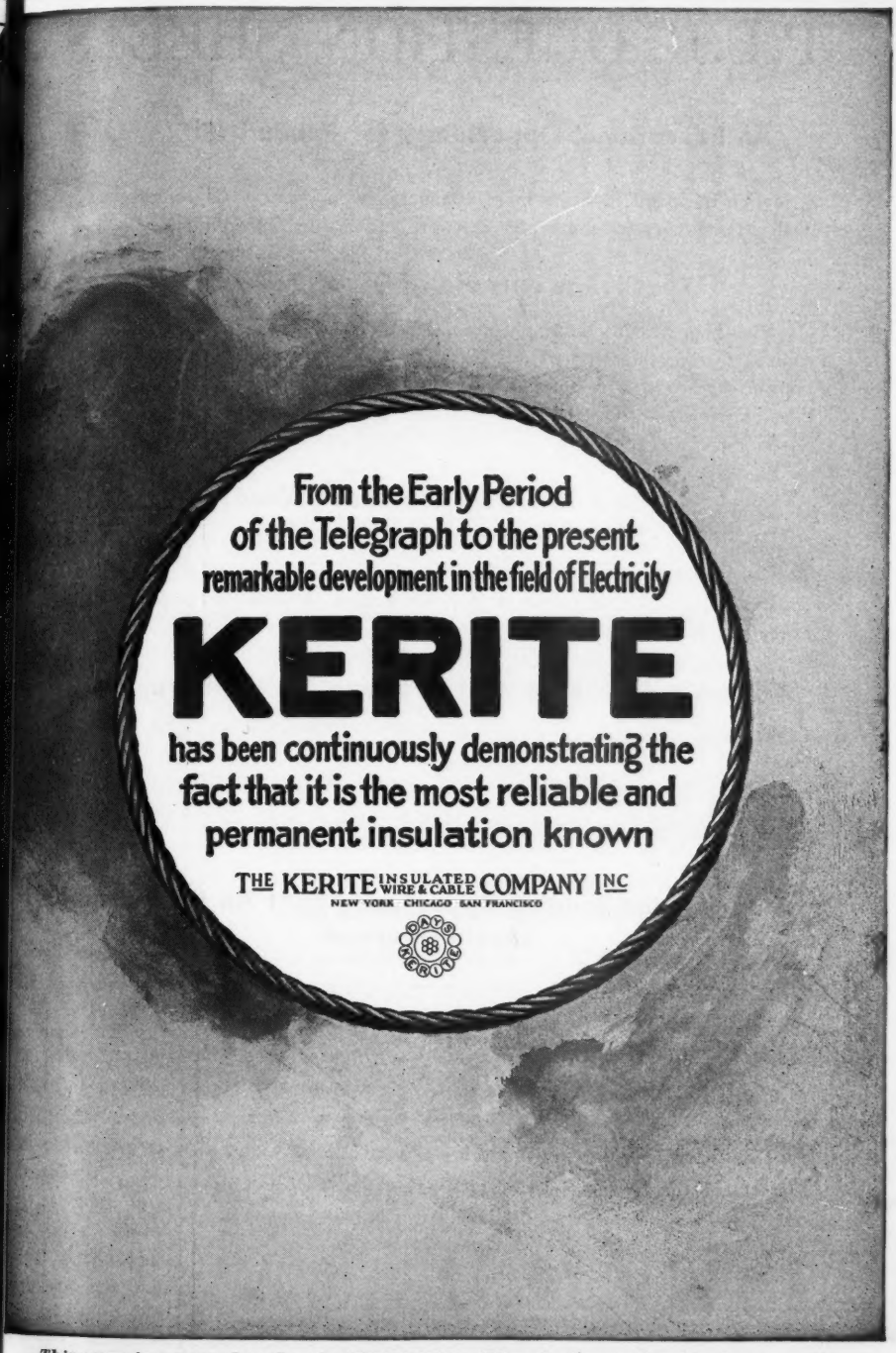
Utility Expands Program

THE North American Company will boost its construction program for the next two years by 50 per cent above the amount originally scheduled at the start of this year, E. L. Shea, president, announced recently.

Addition of 380,000 kilowatt-generating capacity instead of 270,000 as originally contemplated, and extensive additions to transmission, distribution, and other utility facilities are included in the new program, which will lift the constructon budget to $90,000,000 from the $61,000,000 projected earlier.

The change in plans was made known in a letter from Mr. Shea to Gano Dunn and Leland Olds, now working on electric power problems in the National Defense Advisory Commission. Mr. Shea said "there need be no concern as to the adequacy of power supply for all normal and national defense requirements throughout the North American system's areas, which include such large industrial centers as Cleveland, Milwaukee, and St. Louis, as well as Washington.

"North American Company and its operating companies," Mr. Shea said, "expect to meet with their own resources all of the obligations arising out of any national defense problems."



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How Are Question Sheets Used?

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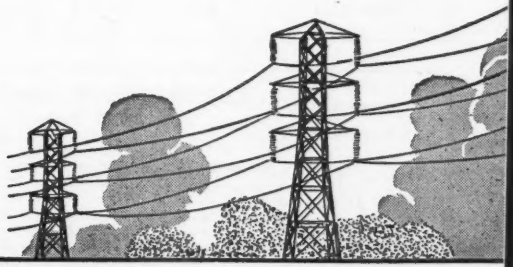

HOOSIER ENGINEERING COMPANY

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Canadian Hoosier Engineering Company, Ltd.
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ERECTORS OF TRANSMISSION LINES

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

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